

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



~~404~~  
PETITION FOR REHEARING BY THE DIVISION AND  
SUGGESTION FOR A HEARING IN BANC

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404  
IN THE  
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals  
for the District of Columbia Circuit

—  
No. 24,533

FILED JUN 29 1972

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RUSSELL L. DAWSON, *Appellee*,

*Nathan J. Paulson*  
CLERK

v.

CONTRACTORS TRANSPORT CORPORATION, *Appellant*,

v.

WILLIAM H. SINGLETON COMPANY, *Appellee*.

—  
Appeal From the United States District Court  
for the District of Columbia

—  
CHARLES E. PLEDGER, JR.  
JOHN F. MAHONEY, JR.  
925 Washington Building  
Washington, D. C. 20005  
*Attorneys for Petitioner*



IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24,533

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RUSSELL L. DAWSON, *Appellee*,

v.

CONTRACTORS TRANSPORT CORPORATION, *Appellant*,

v.

WILLIAM H. SINGLETON COMPANY, *Appellee*.

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Appeal From the United States District Court  
for the District of Columbia

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PETITION FOR REHEARING BY THE DIVISION AND  
SUGGESTION FOR A HEARING IN BANC

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Contractors Transport, Inc. petitions the Court pursuant to Rules 35 and 40 of the Federal Rules of Appellate Procedure for a rehearing by the division who



heard and decided this case or alternatively, it suggests a hearing in banc upon the following grounds:

A. The holding by the majority denying the Constitutional right to a trial by jury in cases involving the *Murray*<sup>1</sup> rule is inconsistent with previous decisions by this Court dealing with contribution among joint tortfeasors.

B. The decision of this Court involves a question of exceptional importance in the future handling of tort litigation in the court below.

A. *The holding by the majority denying the Constitutional right to a trial by jury in cases involving the Murray rule is inconsistent with previous decisions by this Court dealing with contribution among joint tortfeasors.*

The Supreme Court's *Ryan*<sup>2</sup> decision created a new brand of multi-party litigation. Workmen injured on a construction job now sue the general contractor who in turn impleads, among others, the plaintiff's employer seeking express or implied indemnity and more recently the application of the *Murray* credit. Many of these cases involve both the *Martello*<sup>3</sup> and *Murray* principles.

Now following the decision of this Court a party may have a jury trial to determine the negligence of another for the application of the *Martello* credit, but he would not have a Constitutional right to a jury trial when negligence is to be determined for the application of the *Murray* credit.

This Court in *Martello* stated on page 724, 300 F.2d:

"Accordingly, we now hold in the factual circumstances of this case that when settlement is made

<sup>1</sup> *Murray v. United States*, 132 U.S. App. D.C. 91, 405 F.2d 1361 (1968).

<sup>2</sup> *Ryan Stevedoring Co. v. Pan Atlantic Steamship Corp.*, 350 U.S. 124, 76 S.Ct. 232, 100 L.Ed. 133 (1956).

<sup>3</sup> *Martello v. Hawley*, 112 U.S. App. D.C. 129, 300 F.2d 721 (1962).

with one joint tortfeasor and later a verdict is obtained against the other, *and the jury finds that the settling tortfeasor should contribute*, then the verdict should be credited with one-half its total amount and the defendant tortfeasor should be required to pay only the remaining balance, namely, one-half the total original verdict." (Emphasis supplied)

And more recently in *Jones v. Schramm*, 141 U.S. App. D.C. 169, 436 F.2d 899, 901 (1971)

"... Where both alleged tortfeasors are joined as codefendants in an action brought by the victim, *the liability to the victim of the second tortfeasor, from whom contribution is sought, is not properly assigned to the non-jury domain of the equity court as finder of fact*. If the jury determines on the facts that the second alleged tortfeasor was not negligent, that codefendant has been authoritatively adjudged not a tortfeasor and is not liable in contribution." (Emphasis supplied)

The majority opinion here holds that the "judge erred in resolving the crossclaim himself only if Contractors had a Constitutionally protected right to trial by jury (p. 7, slip opinion). And it does not (p. 12).

The absence or presence of negligence on the part of the settling tortfeasor in *Martello* cases determines whether or not a 50% credit will be applied to plaintiff's verdict and the absence or presence of negligence in *Murray* cases on the part of the plaintiff's employer determines whether or not a 50% credit will be applied to the plaintiff's verdict. In the former there is a Constitutional right to a jury trial; in the latter there is none.

In a situation where an employer is impleaded by virtue of a contractual undertaking requiring him to indemnify another for his negligence, a jury trial could be demanded by him on this issue. Yet on the same issue, i.e. whether or not he was negligent, if the *Murray* credit was sought he would have no such right.

As *Murray* is but an extension of this Court's rule in *Martello*, it would appear that the application of these rules should be uniform. Either a party has a right to a jury trial in both situations or in neither situation.

B. *The decision of this Court involves a question of exceptional importance in the future handling of tort litigation in the court below.*

The majority in footnote 2, page 4 of the slip opinion in discussing the District Court's difficulties in applying the *Murray* rule as reflected in *Turner v. Excavation Construction, Inc.*, 324 F.Supp. 704 (D.C. 1971) states that the District Court was concerned primarily with the apparent inability of an employer to obtain reimbursement for payments made under the compensation statute,<sup>4</sup> if *Murray* is applied. However, Judge Gesell, the trial judge in *Turner*, was faced with a dilemma which to the Court stemmed from unacceptable alternatives in applying *Murray*. The majority states in the same footnote that the employer's right to reimbursement from his employee is not an issue in this case. But, the disposition of the ever-present compensation lien is an integral and necessary part of the proper application of the *Murray* credit, p. 705, 324 F.Supp.:

"This curious extension of the *Martello* rule has an anomalous result with respect to the employer's right to reimbursement for benefits paid in the event the employee is successful in his tort claim against a third party. The logic of the *Murray* ruling would seem to dictate that the employer found to be at fault not be entitled to reimbursement. Such a result, however, would seem to be inconsistent with the unqualified language of both the FECA (5 U.S.C. § 8132) and the Longshoremen's Act (33 U.S.C. § 933), and would directly conflict with the Court of Appeals' own holding in *Randall v. United States*, 108 U.S. App. D.C. 317, 282 F.2d 287 (1960), and with the Supreme Court's decision in *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 411-412, 74 S.Ct. 202, 98 L.Ed. 143 (1953).

<sup>4</sup> 33 U.S.C., Title 933 (1970).

On the other hand, it is incongruous that an employee successful in a third-party action should suffer both a reduction in his verdict by one-half due to the employer's negligence, and an obligation to reimburse the employer out of the diminished verdict to the full extent of benefits paid as workmen's compensation.

Neither of these alternative interpretations of the so-called 'Murray rule' is acceptable to the Court."

Practically speaking, the size of any verdict could understandably affect a trial judge's determination as to whether or not a credit should be applied thereto. He would be most reluctant to reduce a low verdict but on the other hand he now has a vehicle for reducing a too-generous one. The determination of negligence is best left to the jury. Then upon its finding a court can, as Judge Fahy aptly puts it, attend to its housekeeping function in applying or not applying the applicable credit.

#### CONCLUSION

Whether or not a party is negligent is a classical jury question and the curtailment of such right "should be scrutinized with utmost care."<sup>5</sup> Equally important is the uniform application of the *Martello* and *Murray* principles. As this Court has held, implicitly at least, that the determination of negligence in a *Martello* case is for the jury, it should be likewise in a *Murray* situation.

Respectfully submitted,

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*Attorneys for Petitioner*

---

<sup>5</sup> *Dimich v. Schiedt*, 293 U.S. 474, 486 (1934).



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*Appellee.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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APPENDIX

United States Court of Appeals  
for the District of Columbia Circuit

FILED OCT 22 1970

*Nathan J. Paulson*  
CLERK

(i)

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**United States District Court for the District of Columbia**

~~SECRET~~



DANSON, ET AL

CONTRACTORS TRANSPORT

C. A. No. 551-67

Supplemental Page No. 1

DATE	PROCEEDINGS	FEES	TOTAL
1968			
Apr 15	Interrogatories of 3rd party pltf. to 3rd party defts. filed		
Apr 23	Interrogatories of pltf. to defts.; c/m 4-22. filed		
Apr 24	Objections of deft. #2 to pltf's interrogatories; c/m 4-23; M.C. filed		
Apr 29	Response of pltf. to objections to interrogatories of 3rd party defts; c/m 4-26. filed		
Apr 30	Objections of 3rd party defts. to interrogatories of pltf; P&A; c/m 4-30; M.C. filed		
May 2	Response of pltf. to objections to interrogatories of deft. #2; c/m 5-1. filed		
May 15	Recommendation sustaining objections of 3rd party defts. to certain interrogatories. AC/N Asst. Pretrial Examiner		
May 15	Recommendation sustaining in part and overruling in part objections of deft. Magazine Pros. Construction Corp. to certain interrogatories; reframing in part; said deft. to answer said interrogatories on or before June 15, 1968. AC/N Asst. Pretrial Examiner		
May 22	Objections of pltf. to the recommendations of pretrial examiner; c/m 5-21; M.C. filed		
May 20	Opposition of deft. #2 to pltf's objections to pretrial recommendations; c/m 5-28. filed		
Jun 13	Answers of defts. to interrogatories; c/m 6-11. filed		
Jun 11	Order denying opposition of pltf. to recommendation of pretrial examiner. (M) Micro 6-13-68 Curran, C.J.		
Jun 21	Order overruling pltf's objections to the recommendation of the Pretrial Examiner and sustaining the recommendation of the Pretrial Examiner. (M) Micro 6-26-68 Curran, C.J.		
Aug 27	Answers of deft. #2 to interrogatories of pltf; c/m 8-27; exhibit. filed		
Sep 9	First notice under Rule 13		
Sep 12	Motion of pltf. to stay the operation of Rule 13; P&A; c/m 9-10; M.C. filed		
Sep 24	Notice of pltf. to take oral deposition of John R. Wiseman; c/m 9-24. filed		
Sep 27	Order staying Rule 13 until January 15, 1969. (M) Robinson, J.		
	See over		

DATE		PROCEEDINGS	FEES	TOTAL
1968				
Oct	15	Motion of pltf. to strike. for judgment by default or for order compelling answers to interrogatories: P&A; c/m 10-14; H.C. filed		
Oct	22	Memorandum of P&A by def. #1 in opposition to pltf's motion to strike: c/m 10-21. filed		
Nov	20	Notice by def. #1 of taking deposition of William Conkley; c/m 11-15. filed		
Nov	20	Answer of def. #1 to interrogatories; c/m 11-18; exhibit A. filed		
Dec	5	Withdrawal of pltf's motion to strike and for default and/or to compel answers to interrogatories per pltf's counsel. filed		
Dec	5	Withdrawal by pltf. of motion to strike or for a default per counsel. filed		
1969				
Jan	16	Notice of pltf's to take deposition of Lee R. Ward; c/m 1-14. filed		
Jan	28	Deposition of William Conkley by def. filed		
Mar	28	Certificate of readiness of pltf's; c/m 3-29. filed		
Mar	28	Additional interrogatories of pltf's to def. #1; c/m 3-27. filed		
Apr	7	Objections of def. #1 to additional interrogatories; c/m 4-2-69 H.C. filed		
Apr	14	Deposition of Lee R. Ward for Pltf's (Fee \$100.50) filed		
May	13	Recommendation sustaining objections of Deft Contractors Transport Corporation to certain interrogatories. AC/N Asst. Pretrial Examiner.		
May	16	Objection of Pltf's to recommendation of pretrial examiner; P & A; c/m 5/15/69. filed.		
Jul	1	Order overruling objections of pltf. to Recommendation of Pretrial Examiner. (R) Smith, J.		
Aug	5	Pretrial proceedings - Contractors leave to file cross-claim against Singleton; Michael moved to cross-claim against Contractors; Magazine & Contractors join Reliance Insurance Company as party pltf.; Contractors may take deposition of said pltf. Pretrial Examiner		
Sep	3	Letter re: witnesses by pltf. filed		
Sept	5	Copy of letter re income tax returns filed		
Oct	20	Deposition of Russell L. Dawson for def. filed		
		(see next page)		

DATE	PROCEEDINGS	FEE	TOTAL
1969			
Oct 29	Plaintiff's oral motion for case to be returned to Pretrial Examiner for amendment to brief. Heard and denied. (Rep: P. Brockmeyer)		
Nov 4	Cross-claim of deft. #1 vs. 3rd party deft. William H. Singleton Co. c/m 10-30-69. Curran, C.J. filed		
Nov 24	Transcript of proceedings. Pages 12, Oct. 29, 1969; (Rep: Patrine N. Brockmeyer); Court's copy filed		
Nov 24	Letter re witnesses by deft. #2 filed		
Dec 2	List of witnesses by deft. #2; c/m 11/28/69 filed		
Dec 2	Supplemental list of witnesses by deft. #2; c/m 12/1/69 filed		
Dec 4	Supplemental list of witnesses by deft.; c/m 12-3-69. filed		
1970			
Feb 2	Jury and four alternate jurors sworn; trial begun; respited until February 3, 1970. (Rep: Nicholas Sokal) Sirica, J.		
Feb 3	Trial resumed; same jury and four alternate jurors; respited until February 4, 1970. (Rep: Nicholas Sokal) Sirica, J.		
Feb 4	Trial resumed; same jury and four alternate jurors; respited until February 5, 1970. (Rep: Patrine Brockmeyer) Sirica, J.		
Feb 5	Trial resumed; same jury and four alternate jurors; respited until Feb. 9, 1970. (Rep: Patrine Brockmeyer) (Rep: Nicholas Sokal) Sirica, J.		
Feb 9	Trial resumed; juror number 1 excused by the Court; alternate juror number 1 takes seat number 1; respited until February 10, 1970. (Rep: Nicholas Sokal) Sirica, J.		
Feb 10	Trial resumed; same jury and three (3) alternate jurors; respited until February 11, 1970. (Rep: Nicholas Sokal) Sirica, J.		
Feb 10	Letter re witnesses by deft. #2; c/m 2-9. filed		
Feb 11	Trial resumed; same jury and three (3) alternate jurors; respited until February 12, 1970. (Rep: Patrine Brockmeyer) Sirica, J.		
Feb 12	Trial resumed; same jury and three (3) alternate jurors; respited until February 13, 1970. (Rep: Nicholas Sokal) Sirica, J.		
Feb 13	Trial resumed; juror #5 excused by the Court; alternate juror #2 takes seat #5; respited until Feb 16, 1970. (Rep: Nicholas Sokal) Sirica, J.		
Feb 16	Trial resumed; same jury and two (2) alternate jurors; respited until Feb. 17, 1970. (Rep: Nicholas Sokal) Sirica, J.		

DATE	PROCEEDINGS	FEDS	TOTAL
Feb 16	Oral motion of defendant number 2 Magazine Brothers, Inc. for a directed verdict heard and granted. (Rep: Nicholas Sokal) Sirica, J.		
Feb 17	Trial resumed; same jury and two (2) alternate jurors; respited until Feb. 19, 1970. (Rep: Nicholas Sokal) Sirica, J.		
Feb 19	Trial resumed; same jury and two (2) alternate jurors; alternate jurors excused; jury retires to deliberate; Court excuses jury at 4:05 P. M.; jury to resume deliberations at 9:30 A. M. Feb 20, 1970. (Rep: Nicholas Sokal) Sirica, J.		
Feb 19	Note from jury. filed		
Feb 20	Jury resumes deliberation; verdict for plaintiff Russell L. Dawson vs. defendant in sum of \$100,000.00; verdict for Vada Dawson vs. defendant in sum of \$10,000.00; jury discharged. (Rep: Nicholas Sokal) Sirica, J.		
Feb 20	Note from jury. filed		
Feb 20	Form verdict. filed		
Feb 20	Plaintiff's instructions (39). filed		
Feb 20	Defendant's instructions (7). filed		
Feb 20	Verdict and Judgment for plaintiff Russell L. Dawson vs. defendant in the sum of \$100,000.00. (N) (ACN) Sirica, J.		
Feb 20	Verdict and Judgment for plaintiff Vada Dawson vs. defendant in the sum of \$10,000.00. (N) (ACN) Sirica, J.		
Feb 20	Verdict and Judgment for defendant Magazine Brothers, Inc. vs plaintiffs, by direction of the Court. (N) (ACN) Sirica, J.		
Feb 18	Transcript of proceedings February 12 and 13, 1970, pp. 1-83; (Official Court Reporter, Nicholas Sokal, Court's copy.) filed		
Feb 24	Excerpt of Transcript of Proceeding dated Feb. 9 & 10, 1970; pp. 1-51; (Court Reporter: Nicholas Sokal, Court's copy). filed		
Mar 5	Memorandum of deft. in support of cross claim vs 3rd party deft; c/m 3-4-70 filed		
Mar 10	Memorandum of Pltf. in opposition to memorandum of Deft. in support of Cross-claim against 3rd party Deft; c/m 3-10-70 filed		
Mar 13	Supplemental memo of pltf. in opposition to memo of deft. #1 in support of crossclaim against 3rd party deft. Singleton; c/m 3-12-70; exhibit. filed		
1970			
Mar 19	Reply memorandum of deft., Contractors; c/m 3-18-70. filed		
	See next page		



Date	Proceedings	Fees	Total
1970			
Mar 25	Memorandum of 3rd party deft. in opposition to crossclaim; c/m 3-20-70.		
	filed		
May 4	Supplemental memorandum of pltfs. in support of pltf's position that		
	Court should find against deft. #1 vs 3rd party deft; c/m		
	5-4-70.		
	filed		
May 5	Order denying deft. Contractors Transport Corp.'s cross-claim vs		
	third party deft. William H. Singleton Co. (N) Sirica, J.		
May 6	Reply of deft. Contractors Corp. to supplemental memorandum of pltfs;		
	c/m		
	filed		
May 8	Motion of deft. #1 for findings of fact and conclusions of law; F&A;		
	c/m 5-7; H.C.		
	filed		
May 21	Response of pltfs. and 3rd party deft. to motion of 3rd party pltf.		
	for findings of fact and conclusions of law; c/m 5-21.		
	filed		
May 27	Objections of deft. to pltf's proposed findings of fact; c/m 5-26.		
	filed		
Jun 3	Notice of appeal by 3rd party pltf. from judgments of May 5, 1970;		
	copies mailed to Warren E. Magee and James C. Gregg; deposit by		
	Mahoney \$5.00.		
	filed		
Jun 11	Description of parts of the transcript of trial for record on		
	appeal by 3rd party pltf; c/m 6-10-70.		
	filed		
Jun 11	Statement by 3rd party pltf. of issues on appeal; c/m 6-10-70.		
	filed		
Jun 16	Designation of pltf. of additional parts of record to be included in		
	appendix; c/m 6-15-70.		
	filed		
Jun 17	Defendants' exhibits #6,7,9 & 10.		
	filed		
Jun 18	Supplemental designation by pltf. of additional part of record to		
	be included in appendix; c/m 6-17-70.		
	filed		
Jun 22	Judgment in favor of pltf. Vada Dawson against deft., Contractors		
	Transport Corp. paid and satisfied per pltf's attorney.		
	filed		
Jun 23	Findings of fact, and conclusions of law concerning cross-claim of		
	deft. and 3rd party pltf, Contractors Transport Corp., vs 3rd		
	party deft, William H. Singleton Co., finding that the accident		
	which caused injuries and damages to pltf. was caused by sole		
	negligence of Contractors; that male pltf. was not guilty of		
	any contributory negligence; that no employees of Singleton were		
	guilty of any negligence which contributed to proximately cause		
	accident of 12-15-64; that Singleton is in no sense a joint	See Ave.	



UNITED STATES DISTRICT COURT FOR THE DISTRICT  
OF COLUMBIA

RUSSELL L. DAWSON, and his  
wife, VADA DAWSON,  
Ruther Glen, Virginia

Plaintiffs,

vs.

CONTRACTORS TRANSPORT CORP.,  
a corporation,  
300 6th Street, South  
Arlington, Virginia

MAGAZINE BROS. CONSTRUCTION CORP.,  
a corporation,  
1730 K Street, N. W., Suite 1101  
Washington, D. C.

Defendants.

551-67

C. A. No. \_\_\_\_\_

COMPLAINT

(For Personal Injuries, Loss of Services and  
Consortium, Arising Out of a Construction  
Accident)

Count I.

The plaintiff, Russell L. Dawson, alleges:

1. He is a citizen of the United States and brings  
this action in his own right.

2. This is an action of a civil nature and the amount  
in controversy exceeds Ten Thousand Dollars (\$10,000.00), besides  
interest and costs.

3. On or about December 15, 1964 the plaintiff, Russell  
L. Dawson, was a business invitee working in premises at or

near 600 New Hampshire Avenue, N. W., in the City of Washington, District of Columbia, known as the Watergate Project, which was then under construction.

4. On December 15, 1964 the defendants, Magazine Bros. Construction Corp., a corporation, doing business and having an office in the District of Columbia at 1730 K Street, N. W. and Contractors Transport Corp., a foreign corporation, with offices at 300 6th Street, South, Arlington, Virginia, were doing business in the District of Columbia, and at all pertinent times mentioned herein were engaged in the construction of said Watergate Project in said City of Washington, District of Columbia, for and on behalf of the owners of said Project.

5. The defendant corporations were experienced in the moving and installation of heavy machinery and equipment in the construction of building projects in the District of Columbia and elsewhere.

6. On or about December 15, 1964 the said plaintiff, Russell L. Dawson, while working in said Watergate Project as a steamfitter and business invitee, was violently struck and permanently injured by a defective cable and other flying debris, when the defendants in the course of moving and installing heavy duty equipment, namely, a forty-four (44) ton Chiller for installation in said project, improperly rigged and maintained a block and tackle and pulley system in a negligent, careless, dangerous, defective and unsafe manner, in that said rig, pulley



and cable system was improperly installed and maintained, including defective cables and pulleys, and was otherwise defective, dangerous and unsafe, and that the agents and employees of the defendants, and each of them, failed to properly conduct, supervise and warn persons in the area, including the plaintiff, Russell L. Dawson, and as a result of said negligence of said defendants, contrary to existing safety practices, procedures and regulations in force in the District of Columbia covering such operations, said cable was caused to suddenly break with great force and violence, causing said cable and pulley system to break and to strike the plaintiff, Russell L. Dawson, and to cause other foreign matter also to strike said plaintiff, knocking him to the ground and causing him to suffer painful and permanent injuries.

7. As a result of said accident the plaintiff, Russell L. Dawson, suffered severe, painful and permanent injuries, which have caused physical and mental pain and suffering and will continue to cause him great physical and mental pain, suffering and anguish, which injuries include fractures and contusions about the body; compound fracture of his right arm and elbow; loss of function of his right arm, shoulder and elbow; injuries to the cervical regions of his neck including hypalgesia and hypesthesia, with permanent loss of function of the arm and elbow and other extensive injuries to the cervical spine, back and nervous system of said plaintiff, involving

nerve root injuries, all of which have required extensive hospitalization, a series of operations and will continue to require further medical care, hospital and nursing treatment in the future. Said injuries have resulted in permanently disabling said plaintiff from performing his occupation as a steamfitter, has caused him to lose earnings in the past, and will continue him to lose earnings in the future; have caused a complete disruption and interference in the social household, and personal relationships with his wife and family, all to his permanent damage and injury in the sum of Six Hundred Thousand Dollars (\$600,000.00).

WHEREFORE, the plaintiff, Russell L. Dawson, demands judgment against the defendants, and each of them, in the sum of Six Hundred Thousand Dollars (\$600,000.00), besides interest and costs.

Count II.

The plaintiff, Vada Dawson, alleges:

1. She is a citizen of the United States and brings this action in her own right as the wife of the plaintiff, Russell L. Dawson.
2. This is an action of a civil nature and the amount in controversy exceeds Ten Thousand Dollars (\$10,000.00), besides interest and costs.
3. This plaintiff adopts all of the allegations of Count I of the Complaint by reference and prays that they be made a part of Count II herein.

4. As a result of the serious and permanent injuries sustained by the male plaintiff, Russell L. Dawson, her husband, the plaintiff, Vada Dawson, has been deprived of the services, society, love, affection and consortium of her husband, the male plaintiff. In addition, the female plaintiff has had to forego her normal household and social activities in order to nurse and care for the injured male plaintiff, her husband, and in the future will be required to do so.

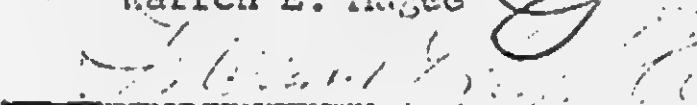
5. As a result of the loss of services, society, love, affection and consortium in the past suffered by the female plaintiff, and as a result of the loss of the services, society, love, affection and consortium in the future, the female plaintiff, Vada Dawson, has been damaged in the sum of One Hundred Thousand Dollars (\$100,000.00).

WHEREFORE, the plaintiff, Vada Dawson, demands judgment against the defendants, and each of them, in the sum of One Hundred Thousand Dollars (\$100,000.00), besides interest and costs.

Of Counsel

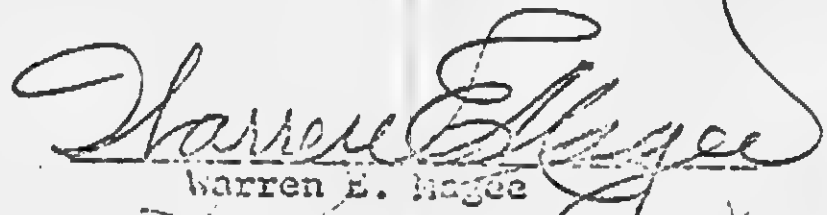
Magee & Dulow  
1730 K Street, N. W.  
Washington, D. C. 20006

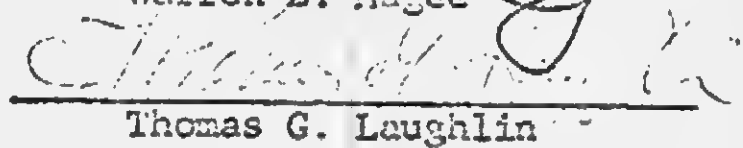
  
Warren E. Magee

  
Thomas G. Laughlin  
1730 K Street, N. W.  
Washington, D. C. 20006  
Attorneys for Plaintiffs

JURY DEMAND

The plaintiffs demand a jury trial of the above-entitled civil action.

  
Warren E. Magee

  
Thomas G. Laughlin

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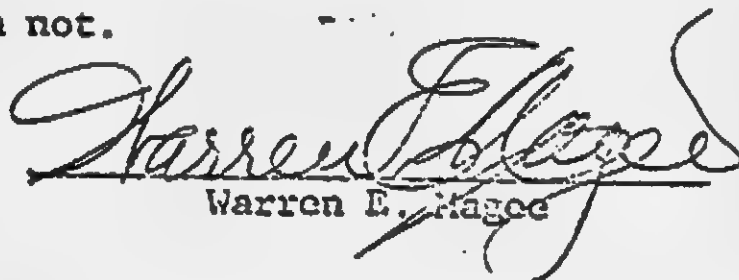
[Caption Omitted in Printing]

AFFIDAVIT OF NON-RESIDENCE

DISTRICT OF COLUMBIA, SS:

Warren E. Magee, Esq., counsel for the plaintiff herein, being first duly sworn under oath deposes and says the defendant, Contractors Transport Corp., is a foreign corporation, not incorporated under the laws of the District of Columbia, which is doing business in the District of Columbia, but has not qualified to do business in the District of Columbia and has no registered agent or office in the District of Columbia and that the last known address of said foreign corporation is 300 6th Street, South, Arlington, Virginia.

Further deponent sayeth not.

  
Warren E. Magee

---

OFFICE OF RECORDER OF DEEDS, D. C.  
SIXTH AND D STREETS, N. W.  
WASHINGTON, D. C. 20001  
Phone District 7-0671  
March 14, 1967

Contractors Transport Corp.  
300 6th Street, South  
Arlington, Virginia 22202

RUSSELL L. DAWSON, et al  
vs.  
CONTRACTORS TRANSPORT CORP., et al  
In Re: Civ. Div. U.S. District Court  
C.A. No. 551-67

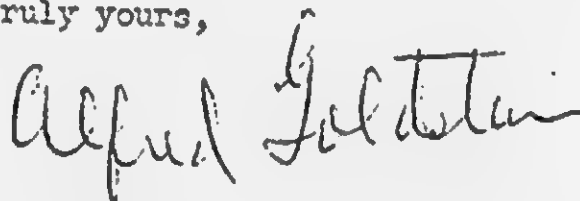
Gentlemen:

We are enclosing herewith a duplicate copy of:

<input checked="" type="checkbox"/> Service of Process	<input type="checkbox"/> Demand
<input type="checkbox"/> Legal notice in the above matter	<input type="checkbox"/> Trial Notice

Service was made upon the Office of Recorder of Deeds for  
the District of Columbia, Corporation Division, on March 14, 1967  
and this copy is forwarded to  
you by registered mail in accordance with the Code of Laws for  
the District of Columbia.

Very truly yours,



Alfred Goldstein  
Superintendent of Corporations

AG:tfs  
Enclosure:

[Caption Omitted in Printing]

SECOND AMENDED THIRD-PARTY COMPLAINT.

COUNT I.

The plaintiffs, Russell L. Danson and Vada Danson, have filed against the defendant, Magazine Bros. Construction Corp., a Corporation, a complaint for personal injuries, a copy of which is attached hereto as "Exhibit A".

The defendant and third-party plaintiff, Magazine Bros. Construction Corp., a Corporation, alleges that by a written agreement dated November 4, 1964 entered into between this defendant, Magazine Bros. Construction Corp., a Corporation, and the third-party defendant, William H. Singleton Co., a Corporation, and the third-party defendant, William H. Singleton Co., a Corporation, was engaged by the defendant and third-party plaintiff, Magazine Bros. Construction Corp., a Corporation, as an independent subcontractor to perform certain work in connection with the furnishing of all labor, materials, scaffolding, tools, equipment, services, and other requisites required to complete in place, and to the extent that the said William H. Singleton Co., a Corporation, was obliged to do, in connection with the plumbing, heating, ventilating, air conditioning, and sprinkler work, in connection with the construction of the Watergate Project located at New Hampshire and Virginia Avenues, N.W., Washington, D.C., and this defendant and third-party plaintiff alleges that if the plaintiffs

suffered any damages or alleged in the complaints filed herein, said injuries and damages were occasioned by the negligence and/or the lack of due care on the part of the third-party defendant, William H. Singleton Co., a Corporation, in the performance of its work under its contract with said third-party plaintiff, dated November 4, 1964.

The third-party defendant, William H. Singleton Co., a Corporation, after, to-wit, December 15, 1964, merged with and/or into the third-party defendant, Linbach Company, a Corporation, and the said William H. Singleton Co., a Corporation, is now a division of the aforesaid third-party-defendant, Linbach Company, a Corporation. The said Linbach Company, a Corporation, third-party defendant herein, acquired all of the assets and liabilities of the third-party defendant, William H. Singleton Co., a Corporation, including any and all rights and liabilities under its contract with Maguire Bros. Construction Corp., a Corporation, as described aforesaid, and said Linbach Company, a Corporation, third-party defendant herein, is the successor corporation to the aforesaid third-party defendant, William H. Singleton Co., a Corporation.

WHEREFORE, this defendant and third-party plaintiff demands judgment against the third-party defendant, William H. Singleton Co., a Corporation, and/or Linbach Company, a Corporation, third-party defendant, as the successor corporation to William H. Singleton Company, a Corporation, by way of indemnity or contribu-



tion, in whole or in part, for any sum or sums that may be adjudged against this defendant and third-party plaintiff, in favor of the plaintiff.

### CHARGE II.

The defendant and third-party plaintiff, Magazine Bros. Construction Corp., a Corporation, alleges that by a written agreement dated November 4, 1964, entered into between this defendant, Magazine Bros. Construction Corp., a Corporation, and the third-party defendant, William H. Singleton Co., a Corporation, the third-party defendant, William H. Singleton Co., a Corporation, was engaged by the defendant and third-party plaintiff, Magazine Bros. Construction Corp., a Corporation, as an independent subcontractor to perform certain work in connection with the furnishing of all labor, materials, scaffolding, tools, equipment, services, and other requisites required to complete in place, and to the extent that the said William H. Singleton Co., a Corporation, was obliged to do, in connection with the plumbing, heating, ventilating, air conditioning and sprinkler work, in connection with the construction of the Watergate Project located at New Hampshire Avenue and Virginia Avenue, N.W., Washington, D.C.,

The above-described contract provided, among other things, that the third-party defendant, William H. Singleton Co., a Corporation, as the subcontractor, agreed to indemnify and save harmless the contractor, Magazine Bros. Construction Corp., a



Corporation, the defendant and third-party plaintiff herein, from any and all losses, claims, and expenses for injury to persons or damage to property arising out of the operations under the said contract, except for such injury or damage as is caused by the sole negligence of the owner and/or this defendant and third-party plaintiff as contractor.

The contract further provided that the third-party defendant, William H. Singleton Co., a Corporation, assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever (including death resulting therefrom) to all persons, whether employees of the owner or otherwise, caused by, resulting from, arising out of, or occurring in connection with the execution of the work provided for in said contract.

This defendant and third-party plaintiff alleges that all the plaintiffs suffered any injuries or damages, as alleged in the complaint filed herein, said injuries and damages were occasioned by the negligence or the lack of due care on the part of the third-party defendant, William H. Singleton Co., a Corporation, in the performance of its work under its contract with the third-party plaintiff, dated November 4, 1964.

The third-party defendant, William H. Singleton Co., a Corporation, after, to-wit, December 15, 1964, merged with and/or into the third-party defendant, Linbach Company, a Corporation, and the said William H. Singleton Co., a Corporation, is now a

division of the aforesaid third-party defendant, Limbach Company, a Corporation. The said Limbach Company, a Corporation, third-party defendant herein, acquired all of the assets and liabilities of the third-party defendant, William H. Singleton Co., a Corporation, including any and all rights and liabilities under its contract with Magazine Bros. Construction Corporation, a Corporation, as described aforesaid, and said Limbach Company, a Corporation, third-party defendant herein, is the successor corporation to the aforesaid third-party defendant, William H. Singleton Co., a Corporation.

WHEREFORE, this defendant and third-party plaintiff demands judgment against the third-party defendant, William H. Singleton Co., a Corporation, and/or Limbach Company, a Corporation, third-party defendant, as the successor corporation to William H. Singleton Co. a Corporation, for full indemnity for any amount which may be awarded to the plaintiffs against this defendant and third-party plaintiff in an amount equal to the expenses of this action, and costs.

### CAUSE III

The defendant and third-party plaintiff, Magazine Bros. Construction Corp., a Corporation, alleges that by a written agreement dated November 4, 1964, entered into between this defendant, Magazine Bros. Construction Corp., a Corporation, and the third-party defendant, William H. Singleton Co., a Corporation,

the third-party defendant, William H. Singleton Co., a corporation, was engaged by the defendant and third-party plaintiff, Magazine Bros. Construction Corp., a corporation as an independent sub-contractor to perform certain work in connection with the furnishing of all labor, materials, scaffolding, tools, equipment, services, and other requisites required to be placed in place, and to the extent that the said William H. Singleton Co., a corporation, was obliged to do, in connection with the plumbing, heating, ventilation, air conditioning, and mechanical work, in connection with the construction of the "Sargeant" Proj. located at New Hampshire and Virginia Avenues, N.W., Washington, D. C.

The above-described contract provided, among other things, that the third-party defendant, William H. Singleton Co., a Corporation, as the subcontractor, agreed to indemnify and save harmless the contractor, Magazine Bros. Construction Corp., a Corporation, the defendant and third-party plaintiff herein, from any and all losses, claims, and expenses for injury to persons or damage to property arising out of the operations under the said contract, except for such injury or damage as is caused by the sole negligence of the owner and/or this defendant and third-party plaintiff as contractor.

The contract further provided that the third-party defendant, William H. Singleton Co., a Corporation, assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever (including death result-

ing therefrom) to all persons, whether employees of the owner or otherwise, caused by, resulting from, arising out of, or occurring in connection with the execution of the work provided for in said contract.

This defendant and third-party plaintiff alleges that if the plaintiff suffered any injuries or damages, as alleged in the complaint filed herein, said injuries and damages were occasioned by the negligence or the lack of due care on the part of the third-party defendant, William H. Singleton Co., a corporation, in the performance of its work under its contract with the third-party plaintiff, dated November 4, 1964.

If this defendant and third-party plaintiff is chargeable with negligence as alleged in the complaint, then the primary or active negligence proximately causing the injuries and damages to the plaintiff is that of the third-party defendant, William H. Singleton Co., a Corporation, and the fault or negligence of the defendant and third-party plaintiff, Magazine Bros. Construction Corp., a Corporation, if any, was secondary or passive. This defendant and third-party plaintiff, therefore, is entitled to indemnity against the third-party defendant, William H. Singleton Co., a Corporation, whose fault or negligence caused the injury and damage to the plaintiff for any such sums as may be awarded against this defendant and third-party plaintiff, plus costs and expenses of the litigation, including reasonable counsel fees;

or, in any event, is entitled to contribution if any negligence on the part of the third-party plaintiff and the third-party defendant jointly contributed to the damages and injuries sustained by the plaintiffs.

The third-party defendant, William H. Singleton Co., a Corporation, after, to-wit, December 17, 1954, merged with and/or into the third-party defendant, Linbach Company, a Corporation, and the said William H. Singleton Co., a Corporation, is now a division of the aforesaid third-party defendant, Linbach Company, a Corporation. The said Linbach Company, a Corporation, third-party defendant herein, acquired all of the assets and liabilities of the third-party defendant, William H. Singleton Co., a Corporation, including any and all rights and liabilities under its contract with Magazine Bros. Construction Corp., a Corporation, as described aforesaid, and said Linbach Company, a Corporation, third-party defendant herein, is the successor corporation to the aforesaid third-party defendant, William H. Singleton Co., a Corporation.

WHEREFORE, this defendant and third-party plaintiff demands judgment against the third-party defendant, William H. Singleton Co., a Corporation, and/or Linbach Company, a Corporation, third-party defendant, as the successor corporation to William H. Singleton Co., a Corporation, for indemnity for any such sums as may be awarded against the defendant and third-party plaintiff in favor of the plaintiffs, plus costs and expenses of

litigation, including reasonable counsel fees, or a judgment of contribution against said third-party defendants in the same amount.

HEFFELFINGER, SCHWITZER & GOODRICH

By /s/ Thomas D. Heffelfinger  
 Thomas D. Heffelfinger  
 Attorneys for Defendant and  
 Third-party Plaintiff,  
 Magazine Assoc. Construction Corp., a  
 Corporation  
 1005 Investment Building  
 Washington, D. C. 20005  
 National 6-5576

The third-party plaintiff demands a trial by jury of all issues involved herein.

HEFFELFINGER, SCHWITZER & GOODRICH

By /s/ Thomas D. Heffelfinger  
 Thomas D. Heffelfinger  
 Attorneys for third-party plaintiff

[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

ANSWER TO THIRD-PARTY COMPLAINT

First Defense

The Third-Party Complaint fails to state a cause of action against this defendant upon which relief may be based.

Second Defense

Count I

Third-party defendant admits that it entered into an agreement with defendant, third-party plaintiff, Magazine Bros. Construction Co, on or about the date alleged under the terms of which it was to perform certain services relating to a building project located at New Hampshire and Virginia Avenues, N.W., Washington, D.C. but denies all allegations of negligence on its part and denies all other material allegations contained in Count I.

Count II

Third-party defendant denies that its contract with defendant, third-party plaintiff Magazine Bros. Construction Co. obligated it to indemnify or hold Magazine Bros Construction Co. harmless and denies the remaining allegations contained in Count II.

Count III

Third-Party defendant again denies that under its contract it assumed the obligations alleged, denies the allegations of negligence, lack of due care on its part and denies all remaining allegations contained in Count III.

Third Defense

Third-party plaintiff's damages, if any, were or will have been caused by its own sole or contributory negligence.



Fourth Defense

Plaintiff's injuries or damages were caused by the sole negligence, or active or intervening negligence of the defendant Contractor's Transport Corp.

WHEREFORE, third-party defendant prays that the Third-Party Complaint be dismissed.

MACLEAN, LINTCH, BERNHARD & GREGG

By *James C. Gregg*

2825 E Street, N.W.  
Washington, D.C. 20006  
Ex. 3-8890  
Attorneys for third-party  
defendant

This is to certify that a copy of the foregoing was mailed, postage prepaid, this 9th day of October, 1967, to Thomas B. Hoffelinger, attorney for defendant and third-party plaintiff, 1511 K Street, N.W., Washington, D.C., to John F. Mahoney, attorney for defendant Contractor's Transport, Washington Building, Washington, D.C., and to Thomas J. Laughlin, attorney for plaintiffs, 1700 K Street, N.W., Washington, D.C.

*James C. Gregg*  
James C. Gregg



[Caption Omitted in Printing]

ANSWER TO SECOND AMENDED  
THIRD-PARTY COMPLAINT

For Answer to the Second Amended Third-party Complaint, third-party defendants incorporate by reference their Answers heretofore filed herein and adopt the defenses, admissions and denials as therein set forth.

MACLEAY, INCH, BERNHARD & GREGG

By *Robert H. Gregg*

1006 H Street, N.W.

Washington, D. C.

Ex. 3-2350

Attorneys for third-party  
defendants

[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

CROSS-CLAIM OF DEFENDANT  
CONTRACTORS TRANSPORT CORP.  
AGAINST WILLIAM H. SINGLETON CO.

1. At the time and place alleged in the complaint, plaintiff Russell L. Dawson was employed by third-party defendant William H. Singleton Company and the injuries allegedly sustained by him arose out of and in the course of his employment with said third-party defendant. As a result thereof, plaintiff Russell L. Dawson applied for and accepted Workmen's Compensation benefits.

2. Defendant Contractors Transport Corporation avers that the accident in question was caused by the negligence of third-party defendant William H. Singleton Company and that except for the bar of the Workmen's Compensation Act, said third-party defendant would be liable for damages to plaintiffs.

WHEREFORE, the premises considered, defendant Contractors Transport Corporation demands that any judgment entered in favor of plaintiff Russell L. Dawson against it be credited by 50 percent.

PLEDGER & MAHONEY

By JOHN F. MAHONEY, JR.

John F. Mahoney, Jr.  
925 Washington Building  
Washington, D. C. 20005  
Attorney for Defendant Contractors  
Transport Corp.

A copy of the foregoing cross-claim of defendant Contractors Transport Corp. against William H. Singleton Co. was mailed, postage prepaid, this 30th day of October, 1969 to:

Warren L. Noyce, Esquire  
1750 K Street, N. W.  
Washington, D. C. 20006  
Attorney for Plaintiffs

Thomas B. Heffelfinger, Esquire  
928 Investment Building  
Washington, D. C. 20005  
Attorney for Defendant Magazine Brothers Construction Corp.

James C. Gregg, Esquire  
1625 K Street, N. W.  
Washington, D. C. 20006  
Attorney for Third-Party Defendant William H. Singleton Company.

JOHN F. MAHONEY, JR.

---

John F. Mahoney, Jr.

---

DAWSON, Russell L. and his  
wife  
DAWSON, Vada

551-67

August 5, 1969

CONTRACTORS TRANSPORT CORPORATION  
MAGAZINE BROS. CONSTRUCTION CORPORATION

Damages for personal injuries, loss of consortium, etc.  
due to negligence.

THE PARTIES AGREE TO THE FOLLOWING STATEMENT OF FACTS AND  
STIPULATE THERETO:

Russell L. Dawson

On December 15, 1964 the P/was working in premises at or near  
600 New Hampshire Ave., N. W., Washington, D. C., known as the  
Watergate Project, which was then under construction.

On said date D Magazine Bros. Construction Corp. (Magazine  
Bros.) was a corporation doing business in the District of Columbia  
and Contractors Transport Corp. was a corporation with offices  
in Arlington, Va. and doing business in the District of Columbia.

On or about December 12, 1964 Contractors Transport delivered  
three Carrier Model 16H100 automatic refrigeration machines  
with accessories to the job site and there lowered these machines  
through an air shaft to the machinery room in the basement.

Third-party Defendant William H. Singleton Co. (Singleton)  
entered into a written contract sometime in November 1964 with  
defendant-third-party plaintiff Magazine to provide and install

the plumbing, heating, ventilating, airconditioning and sprinkler work for the Watergate Project.

Third-party Defendant Limbach Company (Limbach) subsequently merged with or into Singleton and Singleton is now a division of Limbach.

Magazine was the general contractor on the project.

---

THE PLAINTIFFS CLAIM that on December 15, 1964 Russell Dawson was a business invitee on the premises of the Project; that Ds Magazine and Contractors Transport were experienced in the moving and installation of heavy machinery and equipment in the construction of building projects in the District of Columbia and elsewhere.

On December 15, 1964 while Dawson was working as a steam-fitter on the project he was struck and injured by a defective cable, rigging, and other flying debris when the Ds through their agents, servants and employees were engaged in the rigging of and in the moving and installation of heavy duty equipment, a 44 ton chiller, rigged and maintained a block and tackle and pulley system.

Said rigging cable was caused to suddenly break with great force and violence, causing said cable, rigging and pulley system to break and to strike the P, Russell L. Dawson, and to cause other foreign matter also to strike said P, knocking him to the ground and causing him to suffer painful and permanent injuries.

The time of the accident was approximately 8:00 a.m. and it occurred in the underground or basement of said project.

Ps contend the accident and the injuries and damages resulting to them therefrom were caused by the following negligence and violations of statutory and other regulations by the Ds.

Violations of Statutes and Regulations as follows:

Title 36, Sub-Chapters I and II, Sections 36401 through 36422, D. C. Code, 1961 Edition

Safety Standards, Rules and Regulations - Construction, Minimum Wage and Industrial Board Regulations as amended May 18, 1953, Section 11-21108, Sub-sections C(2) and c(3) and table (p. 84); Section 11-21109(g).

Ps rely upon the doctrine of res ipsa loquitur and the following specific negligence: failed to provide adequate lighting; failed to provide adequate supervision in that they failed to clear the area of individuals; failed to supervise the correct and proper rigging, pulley, and cable system for moving and installing the chiller in that the cables were frayed and the pulleys were installed backwards or reversed; rigging the system for moving and installing the chiller in a defective and unsafe manner in that they used wooden stays instead of steel stays; used chokers, gate blocks, and clamps in the wrong places; failed to use proper bagging, insulation or buffers in that they used none; failed to



use properly trained employees in that Contractors' foreman was not competent to carryout the work, of all of which the Ds failed to give adequate or any warning to persons operating in the area including the male P and all of which constituted a failure on the part of the Ds to provide the male P with a safe place to work.

PLAINTIFFS' CLAIMED INJURIES:

Vada Dawson:

Seeks damages because of the permanent injuries sustained by her husband, for the deprivation of his services, society, love, affection and consortium, and has had to forego her normal household and social activities in order to nurse and care for her injured husband, and is presently doing so and in the future will be required to do so, in the care of her permanently injured husband.

Russell Dawson:

Contusions about the body and abrasions

Compound comminuted fractures of the right arm and elbow; radial head, compound, right

Loss of function of the right arm, shoulder and elbow

Hypalgesia and hapesthesia to cervical region of his neck

Nerve root injuries to the cervical spine, back and nervous system

Weakness and limitation of motion of the arm, elbow, shoulder, neck and extremities, with pain

Post concussion, headaches, dizziness and inability to sleep

Paralytic ilius

Pain and suffering

All of the above items have resulted in permanent total disability to the plaintiff, Russell L. Dawson.

The plaintiffs' claimed special damages and a list of witnesses known to them are set out in a statement which is attached hereto, made a part hereof and incorporated herein by reference marked "A".

THE MALE PLAINTIFF CLAIMS total disability from December 15, 1964 to date, which total disability will continue permanently in the future.

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THE DEFENDANTS MAGAZINE AND CONTRACTORS AND THE THIRD-PARTY DEFENDANTS SINGLETON AND LIMBACH all deny all allegations of negligence or violation of statute or regulations made by any other party, including the Ps, against them.

DEFENDANTS MAGAZINE AND CONTRACTORS further defend on the basis that any injuries or damages claimed to be sustained by the Ps resulted from the sole or contributory negligence of the male P in his failure to keep a proper lookout for his own safety and failed to watch where he was walking; having been warned or advised to keep away from the area of the crane, failed to heed

the warning; as a workman familiar with the work operation of crane and cables, he heard the "scream" of the cable and knew or should have known that this meant that the cable was going to break but he failed to take any quick or immediate action for his own safety.

Further the male P knew or should have known of the dangers inherent in the building, and the surrounding area, and the conditions existing on the premises and particularly in the area of the crane and cable, and he assumed the risk of an accident when he entered the area.

These Ds assert that the male P cannot claim the expenses set forth herein as he is not the real party in interest in that respect, the real party in interest being the Reliance Insurance Company.

IN ADDITION TO THE FOREGOING DEFENSES DEFENDANT MAGAZINE as the general contractor, denies any and all liability to the Ps herein, if it is determined that the negligence of any or all of its subcontractors was the proximate cause of the Ps' damages and injuries. As the general contractor on the job and not the employer of the P, denies the application of the Safety Standard Rules and Regulations to it.

MAGAZINE FURTHER alleges that any claims of the Ps are barred in that such injuries arose in the course of employment of the male P in the District of Columbia on which the Ds were liable to

secure the payment of Workmen's Compensation and thereby this action for damages is barred by the provisions of the Longshoremen's and Harbor Workers' Compensation Act as made applicable as the Workmen's Compensation Law in and for the District of Columbia. In addition, the P having accepted Workmen's Compensation benefits from his employer, this D, in the event of any recovery against it, is entitled to a credit of a proportionate share of any judgment herein in favor of the Ps.

The male P was an employee of third-party Ds Singleton and Limbach, and they had the primary responsibility to provide him with a safe place to work, which they failed to do.

MAGAZINE further alleges that the damages and injuries, if any sustained by the Ps, resulted from the sole or contributory negligence of Contractors Transport Corporation adopting allegations of Ps and Singleton and Limbach in these respects and against Singleton and Limbach Company, all allegations set forth by the Ps and all other parties thereto.

MAGAZINE AS THIRD-PARTY PLAINTIFF alleges that by a written agreement dated November 4, 1964, entered into between it and the third-party defendant Singleton was engaged by Magazine as an independent subcontractor to perform certain work in connection with the furnishing of all labor, materials, scaffolding, tools, equipment, services, and other requisites required to complete in place, and to the extent that the said Singleton was obliged

to do, in connection with the plumbing, heating, ventilating, air conditioning and sprinkler work, in connection with the construction of the Watergate Project.

The above-described contract provided, among other things, that Singleton, as the subcontractor, agreed to indemnify and save harmless the contractor, Magazine from any and all losses, claims, and expenses for injury to persons or damage to property arising out of the operations under the said contract, except for such injury or damage as is caused by the sole negligence of the owner and/or this defendant as contractor.

The contract further provided that Singleton assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever (including death resulting therefrom) to all persons, whether employees of the owner or otherwise, caused by, resulting from, arising out of, or occurring in connection with the execution of the work provided for in said contract.

Magazine alleges that if the Ps suffered any injuries or damages, as alleged herein, said injuries and damages were occasioned by the negligence or the lack of due care on the part of ~~the~~ Singleton in the performance of its work under its contract with Magazine dated November 4, 1964, on the basis of Contractors' allegations in these respects.

Magazine further asserts that Singleton after December 15, 1964, merged with and/or into the third-party defendant, Limbach and the said Singleton now is a division of the aforesaid Limbach.

The said Limbach acquired all of the assets and liabilities of Singleton including any and all rights and liabilities under its contract with Magazine as described aforesaid, and said Limbach is the successor corporation to the aforesaid Singleton.

If Magazine is chargeable with negligence as alleged by Ps, then the primary or active negligence proximately causing the injuries and damages to the Ps is that of Singleton Co. and the fault or negligence of the Magazine, if any, was secondary or passive. This D therefore is entitled to indemnity against ~~Singlinton~~ Singleton whose fault or negligence caused the injury and damage to the P for any such sums as may be awarded against this D and third-party P, plus costs and expenses of the litigation, including reasonable counsel fees.

Magazine demands judgment against the third-party D Singleton and/or Limbach third-party defendant, as the successor corporation to Singleton for full indemnity for any amount which may be awarded to the Ps against Magazine in an amount equal to the expenses of this action, and costs, on both implied indemnity as common law and an express contractual indemnity; contribution is also claimed.

Magazine also denies Reliance Insurance Company is entitled to recover because of the statute of limitations.

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CONTRACTORS in addition to the defenses stated hereinabove asserts that employees of Singleton moved the refrigeration machines from the initial landing place where they were left by



Contractors to the final place of installation. Contractors had only two employees on the project on the date of male P's accident, who assisted employees of Singleton in rigging, moving, and installing the refrigeration machines under the supervision of Singleton's foreman.

Contractors asserts that the sling or choker that broke was rigged to the winch truck by employees of Singleton and if P was injured by reason of negligent installation, or if the sling were defective, or there was inadequate inspection thereof, or the like, then, in that event, Singleton would be negligent.

At pretrial Contractors moved for leave to file a ~~xxx~~ cross-claim against Singleton for the purpose of asserting the so-called Murray credit and expounded in Murray v U. S. — U.S. App. D.C. — 405 F.2d 1361 and as a basis therefore asserts that P was employed by Singleton who would be liable to the P for the reasons set forth above, except for the bar of the Workmen's Compensation Act. It is recommended that this motion be allowed over the objection of the Ps' counsel, and it is understood that any right to recovery under such crossclaim may and shall be against Limbach successor corporation to Singleton.

This D further denies any liability to Limbach on the cross-claim of Limbach referred to hereinbelow.

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THIRD-PARTY DEFENDANTS SINGLETON AND LIMBACH assert that the Chiller or refrigeration unit was being moved into place by rigging

equipment owned and operated by Contractors. Singleton and Limbach deny that they agreed to indemnify ~~and~~ or hold Magazine harmless or to assume entire responsibility for any and all damages or injury of any kind or nature whatsoever to all persons, whether employees of the owner or otherwise, arising out of their work on the project under the contract; deny that they are or will be liable in whole or in part for any damages recovered by the P against Magazine; deny all acts of negligence alleged against them and assert that the P's injuries and damages if any were due to the sole, active or intervening negligence of the D Contractors Transport Corporation as follows:

Failure to inspect the rigging equipment

Use of defective cable and rigging equipment as stated by P

Failure to take proper precautions to prevent damage to the cable and rigging equipment, i.e., failure to pad equipment

Improper installation of cable clamps as claimed by P

Violation of the Safety Standards Rules and Regulations of of the District of Columbia, specifically Rule ~~11-21108~~ 11-21108(c)(3), page 85 and Rule 11-21108(2)(g), page 87.

Third-party Ds adopt the allegations of negligence asserted by the P Russell Dawson against the D Contractors Transport Corporation.

At pretrial Limbach moved to CROSSCLAIM AGAINST CONTRACTORS for contribution or indemnity for the amount of any judgment which might be obtained by Magazine against it on the basis of the foregoing allegations of negligence and violations of Rules,

etc. asserted hereinabove. It is recommended that this motion be allowed.

Limbach and Singleton deny any liability to Contractors under the corssclaim asserted by the latter.

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MAGAZINE AND CONTRACTORS at pretrial moved to join Reliance Insurance Company asserting that it is a real party in interest for compensation and other benefit payments paid by Reliance for and on behalf of Ps. No objection was made to this motion being allowed and it is therefore recommended that Reliance Insurance Company be made a party plaintiff. Counsel for the P consents to this in any event.

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FURTHER STIPULATIONS:

Witnesses known to Contractors:

Donald P. Abrahams, President (liability)  
Contractors Transport Corp.  
4500 LeGato Road  
Fairfax, Virginia

Lee R. Ward (liability)  
5112 - 2nd Avenue  
Marlow Heights, Maryland

Dinnard Ward (liability)  
Present address unknown

Dr. Maxwell Hurston (medical)  
919 - 18th St., N. W.  
Washington, D. C.

The parties agree to file with the Clerk of the Court and to mutually exchange, on or before September 2, 1969, a list of the names and addresses of any witnesses known to them (other than those listed herein), including medical and expert witnesses, who have knowledge of any aspect of this case, indicating those who may be used at the trial. Impeachment witnesses are not to be included.

The parties agree to the mutual exchange of all medical reports of examining or treating physicians, now in hand, on or before September 2, 1969, and a similar exchange of all other such reports within 48 hours of the alert of this case for trial.

Counsel for P shall make the male P available for the purpose of a physical examination by physician of Ds' choice before, but not to interfere with, trial date.

Counsel for P shall furnish the Clerk of Court and opposing counsel on or before September 2, 1969, a written itemized list of all special damages not listed herein which will be claimed at the trial, past, present and future, actual or estimated.

The following may be admitted into evidence without formal proof, subject to all legal objections:

Bills, receipts, and other documents initialed by Examiner

Hospital records

X-ray plates

HEW Mortality Tables

The Regulations listed herein

Witnesses known to Limbach:

William Conkley, c/o William H. Singleton Co., Box 152,  
Springfield, Virginia (occurrence)

W. H. Singleton, 628 Oakland Terrace, Alexandria, Virginia  
(contract)

R. A. O'Grady, 7723 Weber Court, Annandale, Virginia (contract)

Counsel for P shall furnish to counsel for D a written authorization, which will be supplied by D within 5 days, and returned to D on or before August 20, 1969, which will enable D to obtain copies of P's Federal Income Tax returns for the years 1963 to date.

Counsel for Contractors may take the deposition of male P restricted to interrogation from and after June 20, 1967, concerning income, employment, injuries and damages provided no delay in the trial of the case results therefrom. Ps' counsel objects.

The Examiner has requested counsel to appear at the trial with the maximum amount of authority to settle this case which will be allowed them by their principals.

Warren E. Magee, Esq. for P

Thomas B. Heffelfinger, Esq. for Magazine

James C. Gregg, Esq. for Singleton and Limbach

John F. Mahoney, Jr. for Contractors

PRETRIAL EXAMINER

Phone  
Fleetwood - 4-1000

# WM. H. SINGLETON CO., Inc.

EXHIBIT A  
Box 152  
SPRINGFIELD, VIRGINIA

Date November 13, 1964  
**To** Contractors Transport Corp. Job Watergate Central Plant  
300 6th Street, South Job Ticket No. 64050  
Arlington, Virginia Delivery See below  
 Ship to See below  
 Via Time and Material Cost Code OM-4

## CONFIRMING

Quantity		Price
3	<p>Receive, unload, store as necessary, and deliver to job site, and rig into place when directed:            Carrier Model 16H100 Automatic Refrigeration Machines with Accessories.</p> <p><u>Price Basis: Time and Material</u></p> <p>Refer to this order number on your invoice for this work, and do not include any other work on the invoice for the work covered by this order.</p>	

**NOTICE**

SHIPMENTS AFTER ON INVOICES DATED LATER THAN THE 30TH OF THE MONTH AGAINST THIS ORDER WILL BE CONSIDERED AS BILLED IN THE FOLLOWING MONTH AND TERMS OF PAYMENT SHALL APPLY ACCORDINGLY.

Req. by JUM(25559)

F.O.B.

## INVOICING INSTRUCTIONS

Placed by HFC/vb

Send original and **3** copies of all invoices to the address given below.

Please follow the instructions given below:

ALL INVOICES MUST SHOW THE ORDER NUMBER APPEARING TO THE RIGHT

PROVIDE THE NUMBER OF INVOICE COPIES REQUESTED ABOVE.

Invoices and statements must be mailed to this office:

**BOX 152  
SPRINGFIELD, VIRGINIA**

WM. H. SINGLETON CO., Inc.

By H.F. Casey *AM*  
 H.F. Casey

## PURCHASE ORDER

No. 62582

VENDOR'S COPY.



# United States District Court for the District of Columbia

Russell L. Dawson, et al  
Plaintiff  
 vs.  
Contractors Transport Corp.  
Defendant

A TRUE COPY

 2/16/70  
 ROBERT M. STEARNS, Clerk,
By Malcolm V. Z...CIVIL No. 551-67

## VERDICT AND JUDGMENT

This cause having come on for hearing on the 2nd day of February, 19 70,  
 before the Court and a jury of good and lawful persons of this district, to wit:

- |                              |                               |
|------------------------------|-------------------------------|
| <u>1. Rebecca E. Howard</u>  | <u>7. Roslyn Hansbrough</u>   |
| <u>2. Ruth Smith</u>         | <u>8. Robert S. Gaylord</u>   |
| <u>3. Margaret W. Thomas</u> | <u>9. Clara J. Snowden</u>    |
| <u>4. Louis H. Galloway</u>  | <u>10. Dorothy L. Edmonds</u> |
| <u>5. Bessie J. Bowser</u>   | <u>11. Ella E. Evans</u>      |
| <u>6. Carl A. Heinrichs</u>  | <u>12. Albert R. Gray</u>     |

who, after having been duly sworn to well and truly try the issues between  
Russell L. Dawson, plaintiff  
 and Contractors Transport Corporation, a corporation, defendant,  
 and after this cause is heard and given to the jury in charge, they upon their oath say this  
20th day of February, 19 70, that they find the issues aforesaid in  
 favor of the plaintiff and that the money payable to him by the defendant by reason of the  
 premises is the sum of one hundred thousand dollars. (\$100,000.00)

WHEREFORE, it is adjudged that said plaintiff recover of the said defendant the sum of  
one hundred thousand dollars. (\$100,000.00)

together with costs.

ROBERT M. STEARNS, Clerk,

By

Le Roy A. Patterson

Deputy Clerk.

Judge John J. Sirica, Presiding.

[Caption Omitted in Printing]

FILED

MAY 5 1970

ROBERT M. STEARNS  
CLERKORDER

Upon consideration of defendant Contractors Transport Corp.'s cross-claim against third party defendant William H. Singleton Company, and the memoranda filed in support thereof and in opposition thereto, it is by the Court this 5TH day of May, 1970,

ORDERED that defendant Contractors Transport Corp.'s cross-claim be and the same hereby is, denied.

*John F. Sirica*

---

United States District Judge

A TRUE COPY

ROBERT M. STEARNS, Clerk.

By *James P. Capetanio*  
Clerk

[Caption Omitted in Printing]

FINDINGS OF FACT AND CONCLUSIONS OF LAW CONCERNING  
THE CROSS CLAIM OF THE DEFENDANT AND THIRD PARTY  
PLAINTIFF, CONTRACTORS TRANSPORT CORP., AGAINST  
THE THIRD PARTY DEFENDANT, WILLIAM H. SINGLETON CO.

The above-entitled civil action came on for a hearing before the Court and a jury on the Complaint of the plaintiffs for damages arising out of the personal injuries sustained by the male plaintiff in an accident which occurred at the Watergate Project in Washington, D. C. on December 15, 1964. The Complaint alleged that the defendants, Magazine Bros. Construction Corporation (hereinafter referred to as Magazine), a corporation, the general contractor, and Contractors Transport Corp. (hereinafter referred to as Contractors), a corporation, and a subcontractor, were negligent and that their negligence caused the accident which resulted in serious and permanent injuries to the male plaintiff. The female plaintiff, Vada Dawson, sued for damages for loss of services and consortium of her husband.

At the commencement of the trial and before the opening statements of counsel for the plaintiffs and the introduction of any evidence, counsel for all parties agreed and stipulated in open Court that the Third Party Complaint filed by Magazine against the third party defendant, William H. Singleton Co. (hereinafter referred to as Singleton) and the Cross Claim of the defendant and third party plaintiff Contractors against Singleton would be decided by the Court

without a jury after the conclusion of all the evidence and the return of the verdicts of the jury involving the plaintiffs' claims against the defendants, Magazine and Contractors.

At the conclusion of the plaintiffs' evidence, Magazine moved for a directed verdict on the ground that the plaintiffs had failed to establish by a preponderance of the evidence any negligence of Magazine which contributed to proximately cause the accident, and the Court granted that Motion and directed a verdict of the jury in favor of defendant Magazine on the grounds that the evidence fails to establish that the alleged negligence of defendant Magazine, such as negligence in supervision, in furnishing construction lighting and in furnishing barricades did not contribute to proximately cause the accident of which the plaintiffs complain.

The trial continued before the jury on the plaintiffs' claims against the defendant Contractors. The issues of Contractors' negligence, contributory negligence on the part of the male plaintiff as an employee of Singleton working at the Watergate Project at the time of the accident and the question of whether the sole negligence of the male plaintiff and his employer Singleton proximately caused the accident were submitted to the jury and argued by counsel for the respective parties.

The jury returned a verdict in favor of the male plaintiff in the sum of \$100,000.00, and a verdict in favor of the female plaintiff in the sum of \$10,000.00.

Counsel for all parties have submitted their contentions and arguments by way of written Memoranda to the Court, after the return of the jury's verdicts and the entry of judgments thereon by the Court.

Upon consideration of the pleadings, the evidence adduced at the trial, the arguments of counsel and the Memoranda filed with the Court by all counsel, the Court nunc pro tunc as of the 5th day of May, 1970 makes the following

#### FINDINGS OF FACT

1. On December 15, 1964 plaintiff, Russell L. Dawson, was a business invitee working in premises known as the Watergate Project, then under construction by the defendant Magazine; Contractors and Singleton were sub-contractors on this project.

2. Contractors was a rigging and hauling corporation, experienced in the moving and installation of heavy machinery and equipment in construction projects in the District of Columbia and elsewhere.

3. On December 15, 1964 the male plaintiff was working at said project as a steamfitter, in the employ of Singleton.

5. Contractors, by a work order dated November 13, 1964, with Singleton, had contracted to receive, unload, store as necessary and deliver to job site and rig into place when

directed by Singleton three Carrier Model Refrigeration Machines with accessories, each machine having the capacity of forty-four (44) tons of chilling and each weighed 95,000 pounds (Plaintiffs' Exhibit 5).

6. Prior to December 15, 1964 Contractors received, unloaded, stored and delivered to the job site and rigged into place two of the three Carrier Model Refrigeration Machines.

7. The rigging used to move and install these chillers, including the winch truck involved, the rollers, cables, blocks, tackles and tools were the property of Contractors and had been brought to the job site by Contractors.

8. On the morning of December 15, 1964 Contractors, acting through two of its employees, commenced to rig into place the third Refrigeration Chiller. Employees of Contractors set up the rigging arrangements, furnished the rollers to be used under the chiller and rigged the chiller, utilizing block and tackle systems to the winch truck. In performing the rigging pursuant to their contract, Contractors negligently used cables which were defective, that is, cables with broken lays, attached a choker over the metal edge of the truck to a bar on the side of the truck without bagging or insulation and connected several thimbles in reverse order, thereby reducing the efficiency of the entire rigging mechanism.

9. Contractors' employees started the winch for the purpose of moving the chiller over the rollers which had been



placed under the chiller on the morning of December 15, 1964. The rollers under the ~~winch truck~~ <sup>chiller (HSS)</sup> jammed, placing the dead weight of the chiller, being 95,000 pounds, on the rigging. Contractors' foreman signaled Contractors' other employee who stopped the winch truck. Contractors' foreman requested the male plaintiff to get a sledge hammer from the winch truck to be used to break loose the jammed rollers under the chiller. While the male plaintiff was in the area of the winch truck and before the rollers had been corrected for rolling purposes, Contractors' foreman signaled to another employee of Contractors, the winch operator, and the winch was started. This negligent operation of the winch and the rigging caused the choker which passed over the metal edge of the truck, without any bagging or insulating material between the cable and the edge of the truck, to be severed. This severance caused the main cable line to snap like a bow string, severing from the truck a wooden standard, the top portion of which was hurled through the air striking and injuring the male plaintiff.

10. In force and effect at the time of the accident were Safety Standards, Rules and Regulations of the Minimum Wage and Industrial Safety Board of the District of Columbia, adopted pursuant to law, which covered Contractors' operation at the time of the accident, <sup>including (HSS)</sup> ~~namely~~ Regulation 11-21108, and required cables limited to allowable safe loads and required that all cables when brought over a sharp corner or hard material liable

to cut or cause undue abrasion shall be protected by use of bagging or other protective padding (Plaintiffs' Exhibit 3). Contractors' rigging operations were not performed pursuant to said Regulations, violated those Regulations and constituted negligence on the part of Contractors.

11. The negligent manner of rigging and operation of the rigging by Contractors caused the accident of December 15, 1964, in which the male plaintiff was injured. The male plaintiff, Russell L. Dawson, was not guilty of any negligence which contributed to cause the accident of December 15, 1964 and was not engaged in any way in operating the rigging equipment at the time of the accident.

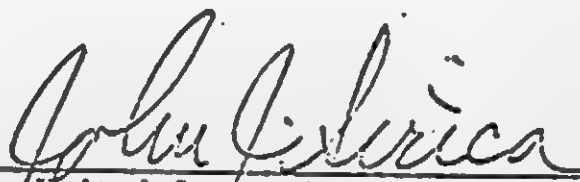
12. No activities of the employees of Singleton contributed to cause the accident of December 15, 1964. As a result of the accident of December 15, 1964, caused by the negligence of Contractors, the male plaintiff suffered severe and permanent injuries, which disabled him from continuing his employment in his trade as a heavy-steamfitter. The injuries of the male plaintiff were proximately caused by the negligence of Contractors.

From the aforesaid Findings of Fact the Court makes the following

CONCLUSIONS OF LAW

1. The accident which caused the injuries and damages to the plaintiffs was caused by the sole negligence of Contractors.
2. The male plaintiff was not guilty of any contributory negligence.
3. No employees of Singleton were guilty of any negligence which contributed to proximately cause the accident of December 15, 1964.
4. Singleton is in no sense a joint tortfeasor with Contractors.
5. The Cross-Claim of Contractors against Singleton should be denied.

Based upon the aforesaid Findings of Fact and Conclusions of Law, this Court entered its Order and Final Judgment dated the 5th day of May, 1970, denying Contractors' Cross-Claim against Singleton.

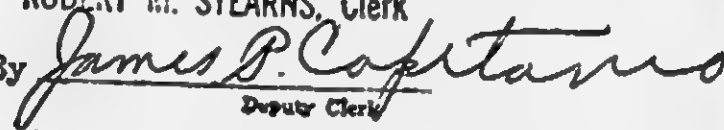
  
United States District Judge

6/23/70

A TRUE COPY

ROBERT M. STEARNS, Clerk

By

  
Deputy Clerk

SUMMONS IN A CIVIL ACTION

CIV. 2a (2-64)  
(Formerly D. C. Form No. 45a Rev. (6-15-55))

## United States District Court

FOR THE  
District of ColumbiaRECEIVED  
MAR 14 1967

MAR 14 1967

CIVIL ACTION FILE NO. 551-67

RUSSELL L. DAWSON, and his  
wife, VADA DAWSON

Plaintiff

v.

CONTRACTORS TRANSPORT CORP.,  
a corporation

Defendant

SUMMONS

Served  
3-15-67 AM

To the above named Defendant : CONTRACTORS TRANSPORT CORP., a corporation

You are hereby summoned and required to serve upon

WARREN E. WAGEE

THOMAS G. LAUGHLIN

plaintiff's attorney, whose address

1730 K Street, N. W.  
Washington, D. C. 20006

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

ROBERT M. STEARNS

*Emelya W. Hartzinger*  
(Clerk of Court)  
Deputy Clerk

Date: March 7, 1967

[Seal of Court]

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.  
1.

3

P R O C E E D I N G S

(Excerpt of proceedings of February 2, 1970.)

\* \* \* \*

THE COURT: Counsel approach the bench.

(AT THE BENCH:)

*Dawson* → MR. MAGEE: I suggest, Your Honor, and agree that this case be tried first on the issues of negligence and damages against the two defendants and the third-party defendant, and that the issues framed by the third-party complainant, the fourth amended third-party complainant and crossclaims filed on behalf of Magazine Bros. and Contractors, defendants one and two, be determined by Your Honor after the jury's verdict is in without a jury.

On questions of fact and law and -- that is all.

THE COURT: Do you agree, Mr. Mahoney?

*Contractors* → MR. MAHONEY: Except for the last statement, I believe the jury determination of negligence on the crossclaim of Contractors with respect to the Murray Credit would be determined, I think of the application of law on the crossclaim. I agree with Mr. Magee that the issues of negligence as to the three parties be submitted to the jury and then the Court rule on the crossclaims based upon the jury's findings.

THE COURT: Do you agree, Mr. Heffelfinger?

*Magazine* MR. HEFFELFINGER: Yes.

THE COURT: How about you (Mr. Gregg)?

4 Singleton → MR. GREGG: Yes, Your Honor. I represent the third-party defendant. I have a crossclaim in the case against Contractors for consideration or indemnity, and it is agreeable to me that crossclaim be determined by the Court.

THE COURT: As I see it, the only thing to be submitted to the jury, if the case gets to the jury, is the case against Contractors Transport Corporation, Magazine Bros. Construction Corporation, and third-party defendant Singleton Co., now known as Limbach Company.

Those are the only three cases submitted to the jury.

MR. HEFFELFINGER: Your Honor, in our opening we are going to at least advise the jury of this third-party complainant.

THE COURT: I think it would be complicating the matter.

MR. GREGG: Your Honor, in that respect, it seems to be confusion, I represent the third-party defendant, Mr. Heffelfinger impleaded us into the case, I think he demanded a jury on his third-party, I think he is entitled to a jury if he wants.

From my position it appears that it would not be essential as it is in the nature of crossclaim, could be determined by the Court on the basis of evidence. It is Mr. Heffelfinger's option.



THE COURT: What I am trying to do is simplify it for  
5 the jury and take these crossclaims away from the jury so they  
won't have to be bothered with that.

MR. HEFFELFINGER: Let's assume we do, it is a ques-  
tion in our opening statement we make any reference to --

THE COURT: Any need to make reference to crossclaim  
if the jury is not concerned with it?

MR. HEFFELFINGER: Not crossclaim, but might be on  
the third party.

MR. MAGEE: I wouldn't see why, if you are contending  
it is based on negligence of Singleton.

MR. GREGG: Mr. Heffelfinger is not going to try the  
third party to the jury, I won't make a statement because the  
issue will be for the Court.

THE COURT: Well, I think in a complicated case like  
this it will help everybody and the jury, too, if we confine  
the case to the three principal parties in the case.

MR. MAGEE: Yes, Your Honor, can handle all segrega-  
tion rights afterwards.

THE COURT: I have done this before. All right, we  
agree on that.

\* \* \*

6 MR. GREGG: Your Honor, I am not going to be making  
an opening statement nor addressing the jury on voir dire.

THE COURT: That is my feeling, if I am going to

decide these crossclaims and all other than principal suits, I don't see any need for it.

The three principal parties will go to the jury.

\* \* \*

JOHN ROBERT WISEMAN,  
called as a witness by the plaintiffs, being first sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MAGEE:

Q State your name and address.

A My name is John Robert Wiseman. I live at 5015 Apache Street, College Park, Maryland.

\* \* \*

MR. MAGEE: And the only other, before examining the witness, Your Honor, I would like to read from the pretrial order that portion which is captioned, "The parties agree to the following statement of facts and stipulate thereto."

THE COURT: All right.

MR. MAGEE: This reads as follows --

THE COURT: Let me explain this to the jury. This is a new jury.

A stipulation of fact means, instead of calling the witnesses to the stand and testifying to these things, the attorneys at the pretrial hearing of this case before this case started, of course, agreed to certain facts which are undisputed

and you can accept as evidence what Mr. Magee is about to read to you without requiring the witnesses to testify to these facts.

All right.

MR. MAGEE: "On December 15, 1964, the plaintiff, Russell L. Dawson, was working in premises at or near 600 New Hampshire Avenue, N.W., Washington, D. C., known as the Watergate project which was then under construction. On said date, defendant, Magazine Bros. Construction, was a corporation doing business in the District of Columbia, and Contractors Transport Corporation was a corporation with offices in Arlington, Virginia and doing business in the District of Columbia. On or about December 12, 1964, Contractors Transport delivered three Carrier models 16H100 automatic refrigeration machines with accessories to the job site and there lowered these machines through an air shaft to the machinery room in the basement. Third-party defendant, William H. Singleton, entered into a written contract some time in November 1964 with defendant, third-party plaintiff Magazine to provide and install the plumbing, heating, ventilating, air-conditioning, and sprinkler work for the Watergate project. Third-party defendant, Limbach and Company, that is another name for Singleton, merged with or into Singleton and Singleton is now a division

of Limbach. Magazine was the general contractor on the project."

: That concludes that stipulation, Your Honor.

THE COURT: All right, sir.

BY MR. MAGEE:

Q Mr. Wiseman, would you briefly give me a background statement concerning your education, experience and training?

A I finished high school in 1949.

I went to work as an apprentice ironworker. Served apprenticeship of two years, learning how to rig and do different types of work with metals, including welding and burning. I worked from '52 to '54 and finished and became a journeyman.

I worked a short time and was drafted into the Army. Went through engineering school in the Army and was taught how to do rigging and other types of construction work and at the end of the time when I finished I became an instructor and taught rigging and demolition work for the Army.

When I came out of the Army, I went back to work at my trade as an ironworker and worked until 1964, a big part of the time, as foreman, running men and showing them how to do rigging and other types of ironwork.

At that time I resigned and went to work for the Government in the capacity as a safety inspector and I have since worked at that same job.

Q What is your official title and for what government do you work?

A I work for the District of Columbia Government and am now what they term as a Safety Specialist.

Q In the course of your training, background and experience, you stated that you had studied and taught rigging?

A Yes, sir.

Q Will you please explain to the Court and jury what is meant by the term rigging?

A Rigging is handling of cables, pulleys, blocks, clamps, and rope to handle heavy machinery or equipment, moving it about, raising and lowering it into position.

Q Is rigging used in connection with construction of building projects such as the Watergate project which is located in the City of Washington?

A Very much so.

Q Have you had occasion to inspect over the course of time as an inspector various methods of rigging that are employed in the District of Columbia?

A Yes, I have.

Q And to evaluate those riggings in an effort to determine whether or not they comply with any safety regulations of the District of Columbia?

A Yes, I do this all the time.

24 Q First I will show you, Mr. Wiseman, a document and ask you if you can identify it?

THE COURT: You better have this marked for iden-

tification, please, as Plaintiffs' Exhibit 3.

THE DEPUTY CLERK: Plaintiffs' Exhibit 3 marked for identification.

[Plaintiffs' Exhibit No. 3 was  
marked for identification.]

BY MR. MAGEE:

Q A document marked Plaintiffs' Exhibit No. 3, and I ask you if you can identify that?

A Yes, sir. This is the Code that the Safety Department in the District of Columbia works by.

Q Now, was this document and this Code in effect on December 15, 1964?

A Yes, it was.

Q Did this Code apply to construction in the Watergate project in the District of Columbia at 600 New Hampshire Avenue, Northwest?

A It did.

MR. MAGEE: Your Honor, I would like to offer the document in evidence and later on we will point out the section upon which we rely.

\* \* \*

Q Now, Mr. Wiseman, in connection with your present position with the District of Columbia Government, what are your duties?

A My duties are to go to various construction jobs, inspect the jobs for safety, make sure that the men are using



26 correct procedures in their work, investigate industrial accidents that occur on the job, teach safety to the foremen and to the men on the jobs, if necessary.

Q And you were engaged in this type of work on December 15, 1964?

A I was.

Q Now, directing your attention, sir, to December 15, 1964, did you receive any report or incident concerning the Watergate project at 600 New Hampshire Avenue, Northwest?

A May I use my notes?

Q Yes, sir.

A On December 15 a call was put in to our office by the Police Department of an industrial accident happening at the address you just mentioned.

Q As a result of that telephone call, what did you do, sir?

A I was sent by my office to investigate the accident and try and determine what caused it.

Q When did you arrive to see the accident?

A Some time after 8:15 -- this was in the morning.

Q Did you go to the project at that time?

A I did go to the project.

Q Did you go into a particular building there?

A I went into the Watergate that they were constructing and went to the basement area where the accident occurred.

Q Would you please describe what was the status of construction of the Watergate development when you saw it on December 15, 1964?

A When you say "status" of it, I assume you mean the stage -- They were in rough concrete stage of the building.

Q What do you mean by that?

A The portion of the building had been set up, forms were up and concrete poured in some of the forms. However, lower sections had been stripped of the building materials that were used for placing of the concrete and they were starting to move in the heavy equipment.

Q This was the stage of the construction when you went that morning to the project?

A Yes, sir.

Q Now, could you describe this mechanical room and tell us whether it was on the actual basement floor of the project or not?

A Mechanical room was on the lowest level, you could see out the end and see the dirt and like a ramp going up, which would indicate at the time this was the lowest point of the building.

Q What was being installed in the building at that time in the way of equipment, Mr. Wiseman?

A In that room were what they call chillers. These are heavy pieces of equipment used for air-conditioning of the

28 building later on.

MR. MAGEE: I would like to have two exhibits identified, Your Honor.

THE DEPUTY CLERK: Plaintiffs' Exhibits 4 and 5 marked for identification.

[Plaintiffs' Exhibits Nos. 4 and 5  
were marked for identification.]

MR. MAGEE: May it please the Court, these were stipulated at pretrial, so we have no problem, and I offer them in evidence at this time.

THE COURT: Any objection?

MR. MAHONEY: No objection.

THE COURT: Received.

THE DEPUTY CLERK: Plaintiffs' 4 and 5 received in evidence.

[Plaintiffs' Exhibits Nos. 4 and 5  
were received in evidence.]

BY MR. MAGEE:

Q Mr. Wiseman, I show you Plaintiffs' Exhibits 4 and 5 and place them before you, and ask you whether you can identify the equipment shown on those exhibits?

A Yes, I can.

Q What equipment is shown on those exhibits?

A These are drawings of the chillers that were being placed into the room when I arrived on the job.

Q Will you describe for the Court and jury, please, the dimensions, height and width and depth, of these chillers and their gross weights?

A The chillers are, according to the drawings, approximately 35 feet 6 inches from end to end; they are eight feet seven and a half inches wide; approximately 12 feet tall. They have an approximate weight of 44 tons.

Q Is the actual pounds given on the description of the chiller -- upper-right-hand corner?

A Operating weight, 95 thousand pounds.

Q When you arrived, how many of these chillers did you see in the basement of the Watergate development?

A There were three of them.

Q What was the condition of two of them? I mean, were they in place and on their concrete pads?

A I don't remember whether they were sitting in place or not.

Q But there were two other chillers in the basement?

A There were three pieces of machinery, there were two plus the one they were moving.

Q Describe the situation you discovered in regard to the chiller you said was being moved?

A When I arrived on the job, the chiller had cables and other rigging attached to it to move it onto a concrete pad.

30 Q What type of equipment was used in moving this chiller in the basement area?

A Cables, pulleys, dolly bars, pinch bars, rollers, cable clamps, chokers, and other types of rigging equipment.

Q A truck was involved, was there not?

A Yes, sir.

Q Would you describe what type of a truck was involved?

A This was a flat-bed truck with a motorized winch attached to the back of it for the purpose of pulling machinery or other heavy equipment.

Q Where was the winch operated from on the truck?

A The winch was operated from the inside of the truck.

Q This would require an operator to be in the cab of the truck to operate the winch?

A Yes, sir.

THE COURT: Excuse me. Will you describe what you call this winch?

THE WITNESS: The winch is a motor with controls that would have a spool on it to roll a cable onto it. In other words, let me use an example such as a crane hoisting a piece of equipment. This has a spool that is run by a motor, the cable runs off the spool out to whatever they want to move.

BY MR. MAGEE:

Q Was a cable attached to this winch at the time you arrived?

1 A Yes, there was.

Q Describe to the jury and a little later I will have you put on the board if you will, where this cable went and how it was attached and what they were endeavoring to do with it from the winch?

A The cable was a half-inch cable coming from the winch going through, in the trade what is known as a gate block. This is like a clothesline pulley.

The difference between the gate block is that it would open up to allow the cable to be attached to the inside of the pulley without unreeling the cable from whatever it was attached to. The cable was attached to a sling on one of the coolers to pull it into position on the pads.

MR. MAGEE: May it please the Court, may I have the next four documents marked as plaintiffs' exhibits? They have been submitted to counsel.

THE COURT: All right.

THE DEPUTY CLERK: Plaintiffs' Exhibits 6, 7, 8 and 9 marked for identification.

THE COURT: Any objection to the exhibits?

MR. MAHONEY: These are being identified now?

MR. MAGEE: I will have them identified and I will make a proffer, Your Honor.

[Plaintiffs' Exhibits Nos. 6, 7, 8

and 9 were marked for identification.]



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BY MR. MAGEE:

Q Mr. Wiseman, I show you four exhibits, 6, 7, 8 and 9, I ask you to examine them and tell us what these documents represent?

A These documents show various types of cables, pulleys, gate blocks and equipment that is used in a rigging operation.

Q One of those is a card. Will you identify that and tell us the source of this card?

A This card comes from our office. It is an identification card to show the men on the job the correct way to make an eye in a cable and attach clamps to hold this eye in place.

Q Is the type of equipment shown on these documents the type of equipment being used, some of the equipment used on the Watergate job?

A Yes.

Q Would you take a pencil and on the exhibits mark the types of exhibits used on this particular job? Check it and initial it.

(The witness marks exhibit.)

Q Now, you have marked, Mr. Wiseman, certain exhibits. I will hold these so the Court and jury can see them. You have marked on Plaintiffs' Exhibit 8 in the lower-right-hand corner a "U with drop-link snatch block".

Will you explain that? And I will let the jury see what that is.

A A snatch block -- let me explain to the jury --

THE COURT: Excuse me. Why don't you stand up in front of the jury and you can explain it.

(Whereupon, the witness leaves the witness stand and approaches the jury box.)

THE WITNESS: A snatch block is more like a clothes-line pulley where you would have to put the line through it and rotate it around. A snatch block is designed so that both ends of a cable or rope are attached to something you don't have to unhook it. This has got like a belt wheel. You push this out and open it up and the pulley is exposed and you put a line in and it will hold it in place.

BY MR. NAGEE:

Q I show you Plaintiffs' Exhibit 7 and you have marked "forged steel shackles".

Show it first to the Court and then the jury.

THE COURT: All right.

THE WITNESS: This is a bolt going through. Sometimes there is a safety pin on the other side to hold it in place and other times this section is threaded. Workmen would use this for a cable with a loop in it or choker with an eye. Instead of taking something like a plain bolt, you use a wrench to take the top off and you do it with fingers and it is expedient to hold the cable.

34

BY MR. MAGEE:

Q I show you Plaintiffs' Exhibit 9. You marked something called a "loop".

Show it to His Honor and describe it to the jury.

A This is what we would call a choker. This is a piece of cable that had one end looped over and back in similar to the way a lady would braid long hair. This is put in to save the place of bolts, also to give strength to the eye of the cable. So when they are lifting something, this eye will not pull out.

You will notice it looks like string or some other material wrapped around this. Wires on the cable are very stiff and when this is woven and projections stick out; and if a man is handling them, he can cut his hands very easily. So a lot of times, not always, they wrap this string or heavy material, so when a man takes hold of it with his bare hands, it will not cut his hands.

Q I show you the card marked Plaintiffs' 6 which emanated from your office.

Exhibit that first to the Court and then explain it to the jury.

A This is a pocket card that we give to the men on a job who are engaged in rigging or handling cable clamps and cables.

This shows the correct way and also incorrect way to

hook up and attach clamps to a cable to give them the strength or make an eye or attach two cables together. This shows the proper way for a person to place the clamps to get the maximum proficiency from the cable.

Q Explain to the jury what happens if this clamp is not attached in what you would call the proper way?

A First of all, take a piece of cable. They use a cable for many different things on a construction job. To attach it, they have to place eyes in the end of it a lot of times.

The cable, depending on the size of it, is good for a certain amount of poundage when they stretch it and then it will break.

You use a cable clamp to make an eye or loop in the end of the cable and put the correct amount of cable clamps onto the eye. At best you can only get 80 percent efficiency of the cable instead of a hundred percent.

If the cable clamps are put on in reverse, you lose over 50 percent of the efficiency and this is reduced in efficiency down to 30 percent and the eyes of the cable will pull out.

Q Were the types of equipment you have described in these exhibits all types of equipment involved in the rigging you found at the Watergate that morning?

A Yes, sir.

MR. MAGEE: I would like to offer Plaintiffs' 6, 7,

36 8 and 9 into evidence.

THE COURT: Any objection, counsel?

COUNSEL: No objection.

THE DEPUTY CLERK: Plaintiffs' 6, 7, 8 and 9 received into evidence.

[Plaintiffs' Exhibits Nos. 6, 7, 8 and 9, previously marked for identification, were received in evidence.]

BY MR. MAGEE:

Q Now, could you please explain to the jury and then we will go up to the board, how this truck was rigged as you called it, to the chiller, for movement purposes when you arrived there at approximately, you say, some time after 8:15 a.m. that morning?

A The truck which was a flat-bed truck had a motor with a spool with cable on it. This is what we would call the winch.

Coming from the winch and going back to a gate block, which was attached to the truck by a choker, we had a half-inch cable. This went to another pulley attached to another column, and then to a sling which was attached to the chiller.

Q Now, what was the purpose of the sling which was attached to the chiller, first?

A The sling was like a guide or a cable placed around the chiller so that the cables could be attached to it. In fact, it was a heavy piece of cable so they could attach their

7 running line to this to pull this into place.

Q How was the running line attached to the sling?

A The running line was attached to the sling with a hook.

Q And you mentioned another gate block was involved near the chiller area.

Would you explain what you mean by that, sir?

A To get the correct movement there are columns in the building. These chillers were so large you could not run a cable straight through the area and pull it directly. Therefore, they used pulleys to deflect the angles of the cables so they could pull the chiller onto the concrete platform.

Q Where was this pulley or choker attached in the chiller area, attached to what?

A There was a column with a piece of one-and-one-quarter-inch cable with the gate block attached to this right side of the chiller.

Q Then this gate block, did the drag or lead line or pulley line then go back to the truck?

A One end was attached to the spool on the truck, the other to the sling on the chiller.

Q Now, the spool on the truck, are you referring to the power spool which winds up and draws the cable in?

A Yes, I am.

Q This is called the winch, is it not?



38 A Yes, sir.

Q Between the winch and gate block on the post, was there another pulley set up?

A There was one gate block or pulley attached to a choker on the truck. There was also one at the far end located beside the chiller.

Q What was the purpose of the one located on the bed of the truck or near the bed of the truck?

A The one that was attached to the gate block was to give them the correct angle. There was also another choker wrapped around a column and went to a toggle on the end of the truck to hold the truck in place.

Q What was the condition of the main cable line when you examined it that morning?

A When I arrived on the job there was one complete lay of the cable that had been removed.

Q Explain to the Court and jury what is meant by a lay of a cable?

A May I draw a picture to make it real easy?

THE COURT: You may.

(The witness approached the blackboard.)

THE WITNESS: First of all, the cable is made up of many small strands of wire. Looking at it in an end view the same as you would a piece of rope, cable to the average layman looks something like this with lots of little wires sticking

9 into it. Every cable is made up and woven. This would be this  
(draws on blackboard).

If we magnified a small piece of cable, these would be considered lays. Each one of the lays of the cable is made up of from one to 30 or 40 fine pieces of wire. These are long pieces of wire all woven together similar to what I told you a while ago, like a pigtail. Each one of the lays of the cable is woven together again to form the cable itself.

When I arrived on the job, one complete lay of the cable was missing.

BY MR. MAGEE:

Q What else did you discover with respect to this pulley and cable besides one complete lay being missing?

A There was also a broken choker on the job.

THE COURT: What was that?

THE WITNESS: Broken choker.

BY MR. MAGEE:

Q Where was that broken choker located when you arrived on the job, Mr. Wiseman?

A The broken choker was laying beside the truck.

Q Mr. Wiseman, I am going to ask you if you would, first of all, did you prepare a drawing or sketch which you made a part of your record of your file at the time you made this investigation?

A Yes, I did.

40 Q Did you produce that pursuant to a subpoena on this matter?

A Yes, sir.

Q Would you produce that and bring it to the board?

Now, Mr. Wiseman, would you take a pencil, please. Assume this is the basement area. Would you please draw on there, first, the truck as you saw it that morning?

(The witness draws on the blackboard.)

Q Draw where the winch was on the truck.

(The witness draws on the blackboard.)

Q Now, was there a metal edge around this truck?

A Yes.

Q Would you put it on the drawing?

(The witness marks on the blackboard.)

Q Now, where was the choker -- by "choker", you also used that with the word "sling"?

A Yes, sir. Choker and sling are identical.

Q Would you draw on this board, please, where the choker was which was attached to a pillar and attached to the truck?

(The witness draws on the blackboard.)

Q You have drawn a square and around it a circle.

The square represents the column, is this correct?

A That is correct.

Q Were these columns square, not rounded?

A Square columns made of concrete.

Q And this area here, would you call that the sling?

A This is a sling or choker. This is the eye and this is the cable coming through the eye, so that when they pull tight on it the choker will tighten up around the collar.

Q Did you find around this choker where it touched the metal in these areas any padding, insulation, or material of any kind?

A No, sir; there was nothing against the corners of the columns whatsoever.

Q Now, will you please draw from the winch the lead line which eventually ends up attached to the water chiller that was being moved?

(The witness draws on the blackboard.)

Q You have drawn a line which shows the lead line at an angle, bent at an angle.

What was the purpose of bending the lead line at an angle rather than going straight?

A There was another chiller located some place in this area.

Q Would you mark it and mark the chiller?

(The witness draws on the blackboard.)

Q Now, this line, is the lead line, is it not, and this is the one --

A Yes, sir.

42 Q Was there anything else in the 20-foot area unusual about that cable?

A For 20 feet or so that I examined, there was not one lay of the cable in place. In other words, it wasn't a complete lead cable.

Q And you discovered this when you went there that morning?

A Yes, sir.

Q Was there another gate block or pulley system at this point?

A Yes, sir.

Q Would you draw that on the board?

(The witness draws on the blackboard.)

Q You have drawn a square.

Does this represent another column in the building?

A This is another column, correct.

Q Would you mark "column" on this and on this, sir?

(The witness marks on the board.)

Q Can you give us any further information as to what held this sling or pulley around this column? Was there a clamp on there?

A This was not a complete choker as this was. This was a straight piece of cable with eyes made into it. Therefore, they had to place clamps onto the cables to lock them in place.

3 Q Do you know the approximate size of that cable?

A This was one and one-quarter inch.

Q Is this another snatch block?

A Yes, sir.

Q Would you write that or gate block?

Did you examine the clamp which was on the cable which was around the column?

A Yes, sir.

Q What did you discover?

A I found the cable clamps were on backwards.

Q What effect does this have on the efficiency of the cables?

A It would reduce the efficiency down to 30 percent.

Q What did the lack of a lay do to the efficiency of the pulling cable?

A Engineering-wise, it would reduce the efficiency of the cables by the amount of one lay and I cannot tell you how much.

Q But it would reduce its capacity?

A Yes, sir.

Q Now, where did the pulling line, after it went around this road block, go?

A There was another chiller located here (marks on board); the chiller located here with a sling, another piece of cable hooked around the front of it to be pulled by.

44 Q Did the lead line attach to this sling?

A Yes, sir.

Q This represents the chiller which was actually being moved in this operation, is this correct?

A Yes, sir.

Q Under the chiller, what did you find?

A Underneath the chiller was different types of rollers and cribbing to hold it up off the ground. A roller is a piece of tree, they can vary in length from a foot to eight or ten feet, that has been smoothed off and completely rounded and a piece of a tree completely solid so they can put a heavy piece of equipment on it and it would roll easily.

Q Would you put the cab of the truck on here?

(The witness draws on the board.)

Q Now, when you arrived at the scene that morning around 8:15, approximately, did you ascertain who operated the truck -- in the cab?

A Mr. Leonard C. Ward.

Q Did you learn by whom Mr. Ward was employed?

A Mr. Ward was employed by Contractors Transportation Corporation.

Q Was there any foreman or superintendent on the job for Contractors Transport Corporation?

A Yes, there was. There was a foreman.

Q What was his name?



A Lee R. Ward.

Q Did you discuss with the foreman, Mr. Lee R. Ward, what had occurred prior to your arriving?

A Yes, I did.

Q First of all, who owns this rigging equipment that was on the job that you have described on this board?

A According to the foreman on the job, Mr. Ward, the equipment and chokers being used to do the rigging with were owned by Contractors.

Q What about rollers?

A He indicated Contractors' equipment.

Q Did you inquire of Mr. Ward with respect to the gate block -- here, Your Honor, and ladies and gentlemen of the jury, -- as being the gate block on the body of the truck?

A When I arrived, this choker was laying alongside the front of the cab.

Q Would you mark a little "X" there?

(The witness marks on the board.)

Q Did you examine the choker?

A Yes, I did.

Q What had you found when you examined this choker?

A I found it had been cut.

Q Did you go to the truck to see if there was any padding of any sort used where that choker had gone over the edge of the truck?

46       A     Yes, I went to the truck with Mr. Ward. He showed me where he attached it and there was no padding used on it. This outside bar is like a bumper strip and on a farm-type truck you put your stands in to hold your hay or other equipment. This is approximately one-quarter-inch metal and is sharp on the corner.

      Q     You said no bagging. Would you explain the use of bagging in an operation of this sort?

      A     Any time that cables go over a sharp point such as a piece of metal, sharp piece of concrete, they should be protected by either bagging -- when I say bagging, this would be heavy rags, burlap, some type of a heavy pliable material, or soft wood, so that you do not have a shear cutting effect over corners of the columns or metal that the cable is going across..

      Q     From your observation of the cable and from the description of what happened from Mr. Ward, what occurred at that time?

      A     When I looked at the cable, the cable had been put over the sharp edge of the truck without protective padding on it and when they made the motor run to wind the cable up to move this, the sharp edge had cut the cable in two. This, in trying to pull this 40 tons of equipment added a tremendous amount of pressure on it, something similar to a bow when you pull the string back. The gate block was holding it in a bow-like fashion. When it was tightened up, this broke causing

this to straighten up the same as a bow string and goes back to the original position.

Q Was someone injured as a result of this accident that morning?

A Yes.

Q Who did you learn was the name of the person injured?

A Mr. Russell L. Dawson.

Q By whom was he employed?

A He was employed by the William H. Singleton Company.

Q What was his occupation?

A He was a pipe fitter.

Q Now, did you discuss with Mr. Ward, the superintendent for Contractors, who actually set up this rigging in this fashion?

A I talked to Mr. Ward and he was the foreman and indicated that he was responsible for the rigging and for the attachment of the cable.

MR. MAMONEY: I object. That is not responsive.

THE COURT: It is hearsay evidence, the fact he talked to somebody, somebody told him something. Any objection on that?

MR. MAGEE: He is objecting to responsibility angle, your Honor.

THE COURT: Repeat the question.

MR. MAGEE: Did Mr. Ward inform you who actually set

48 up this rigging?

A Yes, he did.

Q Who did he say rigged it up?

A He did.

Q He was employed by Contractors?

A Yes.

Q Did he tell you who was operating the truck in the cab?

A Yes, sir; I believe this is a brother or relative working with him.

Q Is that Leonard Ward you mentioned?

A Yes, Leonard C. Ward.

\* \* \*

49 BY MR. MAGEE:

Q (At the board.) Mr. Wiseman, directing your attention to this column with this attached to the truck, did Mr. Ward explain to you why that was done?

A Yes, he did. Originally when they first tried to pull this chiller, the weight was so great instead of the chiller moving, the rear end of the truck swung around. So, therefore, they went back around the column and placed a choker or piece of cable with a toggle on the end of it to hold it in place so the truck could not move forward and give the added resistance.

Q You testified there was no insulation material of any kind around this column and cable?

A There was none.

Q What was the condition with respect to the column -- I am pointing to which appears at the bottom -- gate block?

A The cable came over backside and there was no padding over the sharp corner of this column.

Q Mr. Wiseman, in regard to this padding, prior to the adoption of safety standards and rules, what was the practice in the rigging industry as you knew it in regard to the use of padding?

A Any time you are using cable over a sharp object, no matter what kind, you should use padding, wood blocking or something, to keep the cable from cutting into and injuring yourself or damaging equipment.

Q How high above the floor was the pulling cable which came off the truck?

A The pulling cable, depends on the height of the truck, ran approximately from four foot to the lower area here, ran on an angle down.

Q It was less than seven feet through its entire area, correct?

A Yes, it was.

Q Do you have any practice in the industry where you have the cable which is running under an area of seven feet in regard to what protective measures should be taken?

A Yes, sir. Any time a cable is not seven feet or more

in height, there should be barricades, wood-type horses like you see alongside the road to keep workmen or any individual out of the area of the cable.

Q Now, would you describe whether or not there were any such barricades in this cable area when you got there at 8:15 that morning?

A There were not any provisions for any type barricade.

Q In your discussings with the two Wards, did you learn whether anything happened to a wooden stake on the truck?

A I understand in talking to Mr. Ward there were one or two wooden standards on the truck which would keep materials or equipment from sliding off in case they were carrying them, 51 when the cable broke, it hit one of the standards, severing it when it straightened out. I didn't see the piece of standard.

Q You have indicated when you first saw the broken sling or choker it was in the area which you marked to the right of the truck?

A Yes, sir.

Q Is that the area that you learned where Mr. Dawson was who was injured?

A On talking to Mr. Ward and other workmen in the area, Mr. Dawson had walked into this area, the cable broke, striking him, and there is a wall here (indicating on the board), pushed him over against that wall.

Q So he was knocked as far back as he could go because the wall stopped him?

A That is correct.

Q Now, Mr. Wiseman, resume the stand, please.

(The witness resumed the witness stand.)

Q Mr. Wiseman, in accordance with the regulations and the business practices of the District of Columbia Government, particularly the Industrial Safety Division of the Minimum Wage and Industrial Safety Board, are you required to file an accident investigation report of an accident of this type?

A When we have knowledge of an accident and one of the men is sent, as I was in this case, we make a written report on the accident and file it with our office for future reference.

Q And this accident report is kept in the regular course of business and is contemporaneously with the time of the accident as you can make it?

A Yes, sir.

Q Attached with that report, do you attach supporting data as a part of these reports?

A Yes, I do.

Q Would that data consist of a report of an accident?

A Yes, it would.

Q Would it also cover any statements you might get from any of the people at the scene of the accident?

A Yes, sir.

Q Would it also include names of persons that you saw there or were at the scene?



A It would name some of the people who were on the scene. Normally, in an accident of this type, you have a lot of workmen about and everybody's got different stories.

Q Would it also identify the person who was actually engaged in the rigging operation and who was responsible for it?

A Yes; it would.

Q And would you also attempt to confirm the contractual arrangement under which the rigging was being done? Would such a confirmation be made a part of this report?

MR. MAHONEY: I object to him leading the witness.

THE COURT: Yes, it is leading.

53 Suppose you rephrase the question. Let him say what he did.

BY MR. MAGEE:

Q In regard to the person who was to do the rigging, did you obtain any confirming information concerning the contractual arrangements?

A Yes, I did.

Q Is that a part of the report?

A I have notes made to the effect of that.

Q And do you as you prepare -- as you prepared for us a sketch demonstrating what you discovered at the scene of the accident when you made your investigation?

A Yes, I have such a drawing.

Q Is that made a part of this type of report?

A Yes, it is.

Q Would all these documents be kept in the regular course of business of the Industrial Safety Division?

A Yes, they would.

MR. MAGEE: Your Honor, I would like -- I am substituting a photocopy, counsel have examined it, and I would like it marked as next Plaintiffs' exhibit.

COUNSEL: No objection.

THE COURT: It may be received.

THE DEPUTY CLERK: Plaintiffs' Exhibit No. 10 marked for identification and received into evidence.

[Plaintiffs' Exhibit No. 10 was  
marked for identification and  
received in evidence.]

MR. MAGEE: For the record, this is the industrial report which the witness has been describing, Your Honor.

THE COURT: Very well.

BY MR. MAGLE:

Q Now, when you went back and examined the choker and when you made other investigations in the area, when you last saw it, it was at the spot marked X, which is on the left-hand side of the cab, is that correct?

A Yes, sir.

Q What happened to this choker?

MR. MAHONEY: I object, unless he has knowledge.

THE COURT: Do you have your own knowledge of what happened to it?

THE WITNESS: It was removed.

THE COURT: Your own knowledge.

THE WITNESS: I had the choker in my hand and I made my drawings and notes and when I came back the choker was missing and when I asked the men in the area what happened, nobody knew.

BY MR. MAGEE:

Q Did you find the wood block?

A No, I did not.

55 Q Now, we have identified as the safety standard rules and regulations involving construction, Plaintiffs' Exhibit 3. You have a copy of this in your record, do you not, Mr. Witness?

Would you please produce it?

(The witness produced a document.)

Q To save time, I will refer you, before offering in evidence, to page 37 and ask you whether industrial regulation No. 11-21006 applies to this operation -- page 36?

THE COURT: You say page 36?

MR. MAGEE: Page 37, Your Honor, I am sorry.

THE WITNESS: Would you ask the question again?

BY MR. MAGEE:

Q Does Section 11-21006 at the bottom of the page, on page 37, apply to this rigging operation?

A Yes, it does.

Q Does Section 11-21007 appearing on page 38 apply to this rigging operation?

A Yes, they do.

Q Does Section 11-21008, page 38, apply to this rigging operation?

A Yes, it does.

Q Does Section 11-21009 appearing on page 38 down through subsection C apply to this rigging operation?

A Yes, it does.

Q Does subsection 11-21012 appearing on page 39 apply to this rigging operation?

A Yes, it does.

Q Does Section 11-21108 apply to this rigging operation which appears on page 83 of the regulations?

A 11-21108?

Q Yes, sir, bottom of the paragraph, page 83.

A Yes, it would.

Q Does the chart which starts at page 84 illustrated on page 85 and particularly subsections G through H, I, J, apply to this rigging operation which appear on pages 84 through 87 of the regulations?

A Yes, they do.

\* \* \*

58.

BY MR. MAGEE:

Q Did I understand you to testify, Mr. Ward, the superintendent from Contractors, number one defendant, informed you that he had set up this rigging?

A Who, now?

Q Mr. Ward, the foreman --

THE COURT: Hasn't he already answered that question?

59 I think he has.

THE WITNESS: Yes, he did.

MR. MACEE: No further questions, Your Honor.

THE COURT: All right. Mr. Mahoney.

CROSS-EXAMINATION

BY MR. MAHONEY:

Q May it please the Court.

Now, Mr. Wiseman, when you arrived at the scene, were you able to examine the cables and various things that you have on this diagram?

A Yes, I was.

Q Was this cable intact?

A This cable was intact.

Q Was this sling that attaches to the chiller, was that intact?

A It was still attached; yes, sir.

Q Was this cable still attached to the pulley?

A No, sir.

Q This cable here was not attached to the pulley?

A The pulley was still attached to that --

Q The cable, now, not the sling. When I use the term cable, I won't mean choker.

A Right.

Q This cable was still attached to the pulley which is indicated in here?

A Yes, sir.

Q That in turn goes to this winch?

A Yes, sir.

Q Now, what size cable was this one here, the one that was attached to this (indicating on drawing)?

A Half inch.

Q And this little choker here, did you examine that?

A Yes, I did.

Q What size strand of wires?

A Strand? I could not tell you.

Q What was the thickness of it?

A That was a five-eighth choker.

Q Was it single or double wrapped?

A This was double wrapped.

Q That would have approximately twice or more the strength of this cable?

A Yes, sir.

Q Now, when you made your report, Mr. Wiseman, I assure

when you talked to the people you cover all the important details or details you felt were important and then you included them in your report and your statement and so forth, that are contained all in this exhibit, is that right?

A No, sir. There is much talk and during the course of conversation with the foreman I could not put down anywhere near all of the information that transcribed at that point.

61 Q But you put down all the information you thought was important, I assume?

A I put down as much as I put down.

Q On your report, you had also indicated a diagram and you can refer to your own report, you indicated this section right here is the area which the plaintiff was hit?

A In that area, the plaintiff walked into that area at some point, I can't say exactly at which point it was. He was in the impact area.

Q Did you examine the truck to determine which of the wooden stakes had been broken?

A Yes, I did.

Q Where were they?

A I did not find the wooden stakes. I looked at the truck and was told by Mr. Ward that one of the stakes had been cut.

Q You didn't see the stake that had been cut?

A No, sir.



Q Did your investigation indicate that all the wooden or oak stakes were in place?

A No, sir, they were not.

Q Which ones were missing?

A There was only one stake on the truck and that was on this side up towards the side of the winch.

Q Were you able to determine on which side of the truck the oak standard was broken?

A Only by what Mr. Ward indicated to me.

Q What did he tell you?

A He told me -- I would have to show you an approximation.

Q Just tell me which side of the truck?

A The left-hand side, the side marked X.

Q Now, was it this sling that broke?

A Yes, sir.

Q Can you tell me how, if this sling broke here, it would strike a stake on this side of the truck?

A How the cable could strike that?

Q How it did.

A The load line, when it was straightened out from the snapping of the choker on the opposite side, struck the standard.

Q You are saying now the choker didn't strike the standard, it was the load line?

A The load line.

Q How did you determine that?

A From the impact area.

Q When you went there, this line was intact, was it not?

A Yes, the load line was intact, not on the truck.

Q This is the load line (indicating)?

A This is the load line: yes, sir.

63 Q That was intact when you arrived on the scene?

A Was not intact on the truck. This was laying --

Q The load line was off?

A The load line was completely off the truck. It was still attached to the winch.

Q I understood you to say, Mr. Wiseman, when you came on the scene that you examined these various components and this load line was still up and still attached to the pulley?

A The pulley is still on the load line laying toward's the ground from the truck on the left-hand side, marked X.

Q You are saying this load line was laying over here?

A This load line was laying on the ground in the area of the truck. It couldn't be all the way over because of the chiller, but it was on the ground from where it snapped.

Q It wasn't in place?

A It wasn't in place as shown on the drawing.

Q So when you went there, then, this load line wasn't as indicated on this diagram, is that right? Your testimony

is that this load line wasn't here, was on the ground over here?

A The load line was on the ground, this is correct.

Q Now, I want to refer you to Section No. 10 of your report.

Would you take a look at that? There you indicate what in your opinion happened. You say: "The choker holding gate block broke causing load line to spring forward like a bow string striking the employee."

A Yes, sir.

Q According to your investigation this load line struck Mr. Dawson?

A Yes, sir.

Q Wasn't the oak stake?

A Could have been both. When it cut it into, it could have been either one of the two.

Q According to the information given, you have the load line hit him?

A This is correct.

Q Now, if this load line struck the plaintiff, it must have come detached in some way from the pulley. Did it?

A The pulley? No. The choker snapped. The pulley remained on the line.

Q This line then remained around the pulley and on down the gate block, remained in place in other words?

A Yes, sir.

Q Then this line didn't strike the plaintiff?

A I don't know what you mean by saying it doesn't. If you like, I will approach the board --

THE COURT: Suppose you go down and illustrate what you mean.

(Whereupon, the witness left the witness stand and approached the blackboard.)

65 THE WITNESS: When I arrived on the job, this choker to this gate block, was laying to the side. The choker, Mr. Ward showed me was looped to the loop section of the gate block over the sharp edge of the gate block when pull was made the choker cut loose from the back, this sprung forward in the area like this from the weight of it causing the block, the cable, and if there was a standard which is indicated by Mr. Ward, to be cut off here striking Mr. Dawson in this area.

BY MR. MAHONEY:

Q You put an "X" on that diagram where you believe the oak standard was cut off from that truck.

(The witness marked on the diagram.)

Q Now, based upon your experience, Mr. Wiseman, can you tell us if this choker broke, based on this physical composition here, how the load line at the same time would pull and strike that oak standard? How did that happen?

A The operator of the motor was putting a strain on this. He had the motor in gear. The strain pulling from here

cut this choker. There was so much pressure trying to move this 44-ton chiller that this sprung like a bow.

Q Now, the cable running from here, the winch, through the pulley and down, is one continuous cable?

A Yes, sir.

Q It is not attached to the choker, the choker is something else, it is another piece; right?

Just answer the question.

In other words, this choker is not a part of this cable?

A This choker is not a part of this cable.

THE COURT: Now, wait a minute. Just for the sake of clarity.

Can you draw what you think a choker looks like?

THE WITNESS: Yes, Your Honor.

The gate block -- this, Your Honor, is the gate block with a hook that is attached to it. The hook has an opening. The choker has two eyes, it is a cable with two eyes in it. This went around a quarter-inch plate located around outside of the truck and came back and hooked into the open section of the eye on the pulley.

BY MR. MAHONEY:

Q My question, again, Mr. Wiseman: Would you put this as load line? Is that proper reference term?

A Load line or running line.

Q This is one continuous cable from here around down to here. This is a separate piece?

A That is right.

Q This choker was just put on here for direction, to pull this line aside, was it not?

A To give the correct angle; yes, sir.

Q If the choker breaks, my question to you is: What happened to cause this line to hit this standard?

A This is the load line continuing around this pulley. Once the force from here is removed, this load line would straighten itself out.

Q You mean jump the pulley?

A No, sir. The pulley is intact.

Q Would pull the pulley then right across the truck?

A Would pull the pulley and load line straight across the truck; yes, sir.

MR. MAHONEY: Would you take the stand?

(The witness resumed the witness stand.)

BY MR. MAHONEY:

Q Would you tell me the name of the person or persons that gave you the information that the accident occurred on that side of the truck?

A Mr. Ward.

Q Did you talk with anybody else at the accident scene other than Mr. Ward?

A Besides Mr. Ward, I talked to the operator of the winch, that was either his brother or a relative who indicated that he was operating the winch. I also talked to Mr. William Colceolough, who was the foreman for Singleton.

Q Do your records indicate, Mr. Wiseman, that Mr. Ward told you that he did the rigging on this job?

A In a way, as foreman, he did indicate this.

Q Where in the record?

A It says, "I was working with pipefitter and we finished jacking up cooler and was placing rollers under it."

Q You gathered from that statement he told you he did the rigging?

A He told me he did the rigging and this is why I put a violation charge against his company in the record.

Q I am asking you, Mr. Wiseman, where in the record does he tell you he himself did the rigging or Contractors Transport?

A It is not in the record.

Q Did you talk with any Singleton employees?

A I talked with one. I talked with several. I talked with Mr. Dawson who was employed by Singleton; I also talked with Mr. Colceolough.

Q Did you indicate in your record how many Singleton employees were on that job?

A No, I do not.



Q Do you know what the Singleton employees were doing at the time of your investigation?

A I understand they were working with Mr. Ward.

Q Doing what, rigging?

A I don't know whether doing the rigging or placing the rollers underneath of it.

Q Are you recalling this from memory or do you have something in your file which indicates that?

A There is nothing here to indicate that.

Q Would it be from your memory they were working with Mr. Ward on this?

A Well, there were other men working with Mr. Ward, right. This is from memory.

Q Do you know how many employees Contractors had at that time?

A On the job? Two, to my knowledge.

Q According to what you observed, one of the employees was in the truck, was he not?

A Yes, he was.

Q Could the other employee have done all this rigging by himself?

A He could have done all that rigging if he had taken the time; yes, sir.

Q It is your recollection that Mr. Ward told you that he was the one that did this rigging?

A He was in charge of the rigging.

Q Did he do the rigging?

THE COURT: What was the question -- Did he do the rigging?

MR. MAHONEY: Did he do the rigging?

THE COURT: How would he know that unless he was told?

MR. MAHONEY: I want to know. Did he tell you that?

THE WITNESS: I don't remember whether he -- let's see -- he indicated to me he was in charge of the rigging.

BY MR. MAHONEY:

Q He was in charge?

A Yes, sir.

Q Do you know which of the employees put the rigging around this column and which of the employees put on the clamps which you say were inverted or up-side-down?

A No, I do not.

Q Do you know which of the employees put the rigging around this chiller?

A No, I do not.

Q Or, as a matter of fact, who did any of the hook-up?

A No, sir.

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RUSSELL LEE DAWSON,

called as a witness in his own behalf, being first sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MAGEE:

Q Mr. Dawson, would you give your full name, please?  
Keep your voice up so the last of the jurors can hear you. And  
your place of residence?

A My name is Russell Lee Dawson. My address is Route 2,  
Ruther Glen, Virginia.

Q Mr. Dawson, what is the date of your birth?

A 16 December 1924.

Q And are you still living in this area of Virginia  
72 which you have described today?

A Yes, sir.

Q Are you living in a house or on a farm or what is the  
set up where you are residing?

A I am living in a house, a small farm.

Q Where is this house and farm, can you locate it so  
the jury will know where it is?

A It is 25 miles below Fredericksburg, about 30 miles  
this side of Richmond on 95.

Q And you are married to Vada Dawson who sits here at  
counsel table with me?

A Yes, sir.

Q How long have you been married?

A 1960.

Q How many children do you have of this marriage?

A Two.

Q What are their names and ages?

A Russell Lee, Jr. and Kathryn Lee.

Q Can you give us the ages of the children today?

A One is eight, the boy; and the girl, ten.

Q Mr. Dawson, tell us --

A I'm sorry, I believe the girl is nine, I don't believe she is quite ten yet.

Q Approaching ten?

A Uh-huh.

73 Q Mr. Dawson, tell the Court and jury, please, the extent of your education, where did you go to school?

A I went to school in Virginia and I went through the fifth grade.

Q That was the extent of your formal education?

A Yes, sir.

Q So since the fifth grade in this Virginia school, you have had no formal education?

A No, sir.

Q Now, since that time, what have you done, since you were in the fifth grade?

A Well, I've done work on a farm a while; I've done steamfitting, plumbing with my uncle and come up to Washington and started to work out of the local.

Q How long did it take you to become a steamfitter?

A I started working in the local, I had the experience and started out as a steamfitter.

Q How old were you when you entered the local union?

A I say approximately 30 years old.

Q Would you tell us what local union you are a member of?

A Number 602.

Q Steamfitters?

A Yes, sir.

Q Washington, D. C.?

A Yes.

74 Q And you are a member in good standing of that union, are you not, sir?

A Yes.

Q How many years have you actually been doing steamfitting, Mr. Dawson?

A You mean here in Washington?

Q Yes, in Washington.

A Well, since 1955, I believe.

Q Now, would you describe briefly to the Court and jury the type of steamfitting that you were doing and the type of tools that you were using, please?

A We do all kinds of work. A lot of it is heavy work. Work with large tools, wrenches, a lot of crawling, a lot of climbing on ladders and stuff like that.

A lot of times you have to work where you just barely have crawl space to crawl in manholes and places and things like that. Like in rigging when we use chain falls to lift valves and pipes up in the ceilings and sometimes hooking up units, air conditioning units, hooking up heating units, pipes of all kinds, all sizes.

Q How large pipes can a man in the steamfitting business actually carry into position without rigging into position?

A I think six inches would be about the most. It takes two men to handle that.

Q In this business is this an ordinary part of your business, manual handling of pipe and tools?

A Yes, sir.

Q How long had you worked for the Singleton Company, Mr. Dawson?

A How long had I worked?

Q Yes, sir.

A Approximately seven years.

Q Mr. Dawson, do you remember what the union wage scale was when you first went to work for the Singleton Company as a member of Local 602?

A I believe it was \$3.40 or \$3.41, I won't say for sure.

Q Per hour?

A Per hour.

MR. MAGEE: Your Honor, may I have these income tax returns marked?

THE COURT: All right. Copies of these have been furnished to counsel?

THE DEPUTY CLERK: Plaintiffs' Exhibits 19 through 27 marked for identification.

[Plaintiffs' Exhibits Nos. 19 through 27, inclusive, marked for identification.]

MR. MAGEE: Your Honor, may I ask counsel to approach the bench?

(AT THE BENCH:)

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79 Q Now, Mr. Dawson, you were working for Singleton Company, were you not, during the month of December, 1964?

A Half of that month, sir.

Q In that month you were employed by them?

A Yes, sir.

Q Do you recall in that year you went up to do some work at the Watergate project being built in Washington, D. C.?

A Yes, sir.

Q Now, do you recall how many days you worked on that project in December of 1964?

A This happened the third morning I went in. I had been out two days before that.



A That is right.

Q the accident occurred, that was the accident of your work there at that time, is that correct?

A Yes, sir.

Q When you arrived, as you put it, two days before December 15, 1964, how many Singleton employees do you recall were working on that job?

A I believe there was four, if I remember correctly.

Q Now, on the next day, December 14th, do you recall how many Singleton employees were working on the job?

A I would say four.

Q On December 15, 1964, the day of the accident, how many Singleton employees were on the job?

A Same.

Q Now, --

A Wasn't you talking about Singleton before that?

Q No, sir. Just during this period, December 13, 14, and 15: That was the days you were there, right?

A Yes, sir.

Q Okay. Now, on December 14, what kind of work were you doing on the Watergate project, Mr. Dawson?

A I was sent out to help get the chillers in place, unblock them and put rollers on them and try to help get them in place.

Q This was on the early morning of the third day when

81 A 7:30.

Q On this first day, was anything delivered to the job site to be installed or not?

A The chillers was already in the basement when I got there.

Q So when you arrived, the chillers were in the basement. Will you tell us how many?

A Three of them.

Q What did you do on the first day, if anything, in connection with these chillers?

A We started jacking them up and putting rollers under them for the winch truck to pull them.

Q You are using the term "we". I want to get this very clear. What did you do in regard to these chillers?

A We put rollers under them and, in other words, you use jacks and rollers and winch truck would do the pulling and riggers done the rigging.

Q Who installed these rollers and jacks, how were they put under the chillers? How was that done?

A We would jack them up and put rollers under them.

Q When you say, "We would jack them up," was it you and who else?

A Most of the time steamfitters would jack them up and put rollers under them.

Q Did you at any time on that first day hook up any of the rigging that was attached to the winch?

A No, sir.

Q Did you see any employees of Singleton do any of that rigging of this equipment there that morning?

A No, sir; I did not.

Q Who operated on December 14 the winch? Do you know what company was involved in that operation?

A The rigging company had their own winch operator.

Q And how many employees did the rigging company have at that time on the job, do you recall?

A They had two.

Q Now, any time during that day, did any of the Singleton employees actually engage in any rigging, that is, putting up the cable, attaching to the winch, putting on chokers or anything of that sort?

A Not to my knowledge; no, sir.

Q On the second day, December 14, when you were there, did you also arrive at 7:30?

A Yes, sir. We had a truck by there we changed clothes in and it would be approximately quarter to 8:00 by the time we got in the basement on the job.

Q But you arrived at 7:30?

A Yes, sir.

Q What would the rigger do with respect to the truck and his winches and other equipment that he had at the end of  
83 the day, the first day you were there, did the truck stay or go away from the job?

A That I do not know, sir.

Q You don't remember?

A I don't know whether he stayed on the job or took the truck away.

Q Did the Singleton Company have any what you understood, have some knowledge of rigging equipment what it is like, cables and slings and things like that?

A Yes, sir; I think so.

Q The jacks you were using, did Singleton have any of this type property on the job when you worked there?

A No, sir. If they did, I didn't know anything about it.

Q Now, on the second day, did you engage in any rigging? You have anything to do with the use of the cables or chokers or anything connected with the rigging operation, pulling with the chiller on these rollers?

A No, sir.

Q Now, on that day did you see any of the Singleton employees engaged in any rigging, that is, installing bumpers, chokers, or whatever you call them, or operate the winch?

A No, sir.

Q Who operated the winch on the second day?

A The winch operator.

Q He was the Contractors employee?

A Yes, sir.

Q The rigger, is this correct?

A Yes, sir.

Q How many on the second day, how many employees of the rigger, Contractors, were there?

A Two.

Q Now, did you see any of Singleton's employees engaged in any rigging of this equipment at any time on that day?

A No, sir; I did not.

Q Did you do any rigging on that second day?

A No, sir.

Q Now, on the third day, did you also arrive at 7:30 in the morning like you did the preceding days?

A Yes, sir.

Q You went down into the basement. Then what did you do that morning, did you engage, first, in any rigging of this equipment that was being used to pull the chiller into place?

A No, sir. If I remember correctly, the rigging was already hooked up when we got into the basement.

Q Had been hooked up by people before you got there, is this correct?

A Yes, sir. Like I say, it could have been left there overnight or they could have just rigged it, I don't know.

Q You got there that morning, the rigging was up?

A That is right.

85 Q Did you go in with the other Singleton employees, as a group?

A As near as I can remember, I did.

Q Who operated the cab, the winch and the pulling apparatus to hoist or pull this chiller over the ground?

A The winch operator.

Q Were there other employees of the rigging company, Contractors, there that day besides the operator in the cab?

A The foreman and the operator.

Q What were you doing that morning prior to the accident?

A We was having trouble with the rollers and so this foreman, the rigger foreman, asked me to go to the truck and get a sledge hammer off the truck.

Q After you received this request or instruction, what did you do?

A I walked on out to the truck. In other words, the roller had twisted and wanted a sledge hammer to try to straighten the roller back up.

Q It was in that condition when you went toward the truck, is this correct?

A That is correct. I can't tell you what happened, but he must have been saying to the truck operator to go ahead. I heard the cables crying, so I turned and walked away.

Q How far did you walk away from the truck according to your best recollection?

25 A I say approximately 30 feet, I do not know for sure.

Q Your best recollection is you walked away from the truck and the winch area some 30 feet.

Would that be toward the wall on the left as you saw them on these drawings which were on the board?

A That is correct.

Q Then what happened?

A I was hit by something and knocked to the ground.

Q And did you hear any noise or anything before you were struck?

A Only the crying of the cable is all I heard when I walked away from the truck.

Q After you were knocked to the ground, what do you remember after that?

A I don't remember hardly anything after that.

Q Do you know what part -- you said you were struck. Where were you struck by whatever struck you?

A I was struck in my right elbow and my side.

Q Do you know how long you lay on the ground there after the accident?



A No, sir; I have no idea.

Q Can you tell us whether you were suffering any pain at that time and suffering from the blow?

A Yes, I remember I was suffering terrific pain long as I do remember.

87 Q Were you bleeding?

A Yes, I eventually was, according to my clothes; but I didn't know at the time. I had coveralls on over top of more clothes.

Q Then did there come a time when you were taken from the scene of the accident?

A Eventually.

Q You have any real recollection of this?

A No, sir; I come to in the hospital.

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140

LEE ROY WARD,

called as a witness, being first sworn, was examined and testified as follows:

THE COURT: This is another witness that Mr. Mahoney is calling out of turn and as part of his case. All right.

141

DIRECT EXAMINATION

BY MR. MAHONEY:

Q State your full name, sir.

A Lee Roy Ward.

Q What is your address, Mr. Ward?

A 5211 Janice Lane, Temple Hill Road.

Q What is your occupation?

A I was vice president for the United Rigging and Heavy Hauling located in Hyattsville.

Q Did there come a time you were employed by Contractors Transport Corporation?

A Yes, sir; I was.

Q Were you so employed by that company in December 1964?

A Yes, sir; I was.

Q Did you work on the Watergate project then?

A Yes, sir.

Q What was your position with the company on the Watergate project in December 1964?

A I was foreman for them, sir.

Q Did you assist in the movement of three chillers into the basement of the Watergate Apartments?

A Yes, sir.

Q Would you tell us, Mr. Ward, how long that operation took from the time of the delivery of the chillers until put into their final resting place?

12 A We delivered them on the job site on the 13th.

Q When were they finally put into place?

A I believe it was on the 15th, sir.

Q So it would be 13th, 14th and 15th, three days?

A Yes, sir.

Q On the 13th, Mr. Ward, who was working with you and what did you do on that date?

A On the 13th we loaded the chillers in our yard and took them to the job site and we had a crane there on the job site and we had riggers to lower this equipment down into a hole-like and beside this street.

Q Was it just the Contractors' job to lower this down into the building on that day?

A Yes, sir.

Q Now, in that connection, Mr. Ward, have you heard the expression, "The first drop rule"?

A Yes, sir; I have.

Q Is that rule a type of union expression?

A Yes, sir, in the past the expression was that riggers got the first drop.

Q What does that mean in your sense?

A Well, my experience is that the riggers would place equipment on any job. Once a crane unhooked from it, then it becomes a steamfitter's job to place the equipment.

Q Now, was that rule in practice on this job?

143 A Yes, it was.

Q How many employees did you have on the first day, the date you dropped the chillers?

A We had a couple drivers which would deliver equipment to the job, and myself; and I believe four other riggers.

Q How many employees did you have the second and third day, that is, after the drop was made?

A Myself and my brother -- two employees.

Q After the first day, Mr. Ward, who did the rigging to move the equipment from where you placed it by the cranes into the final resting place?

We will take the second day now, who did it then?

A The steamfitters, sir.

Q What was your function with respect to that work?

A Best I recall, I was to assist in moving this equipment.

Q Whom did you assist?

A Well, I more or less gave advice and helped the steamfitter foreman to move the equipment.

Q Were you able to tell any Singleton men what to do, where to go and whatnot?

A As far as I know, if I asked them to do something, they would do so; yes, sir.

Q Did you work with the foreman?

A I worked with the foreman; yes, sir.

4 Q On the second day, can you tell us how many Singleton people worked in this rigging operation?

A I would say between six and eight.

Q Now, how many chillers were moved into their final place on that second day?

A I think we had two already set or was finished setting the second one.

Q On the third day, say on the night of the second day, Mr. Ward, did the winch truck which belonged to Contractors leave the job, if you remember?

A No, sir.

Q What happened to the rigging at the end of the work day?

A The rigging equipment? Most of it is still on the job. We have a pickup truck, I think was used for transportation and it did go back to the yard.

Q When you rig something, I mean what happens after you finish your work for that particular day, what happens to the rigging?

A You mean the rigging equipment?

Q Yes, sir, the load line, choker, and whatnot.

A Well, if our truck was in position and we haven't completely made a pull, what I mean is, if we see we could probably move the chillers in the morning with the same setup, we didn't disturb the hookup, just slacked off on the load line.

145 Q Just loosened the top and leave it there for the night?

A Yes, sir.

Q Is that what happened on the 14th?

A I can't say for sure, but I believe it was, sir.

Q On the morning of the 15th, who did the rigging to get it back and make the hookup?

A That is just a matter of taking up on the winch, which would be the operator -- to get the tightness back.

Q Was any hookup made on that day?

A I couldn't say for sure, but it could have been, sir. I can't recall now.

Q I am going to show you what is on the board, a diagram made by Mr. Wiseman, the safety inspector, and ask you whether the rigging setup and position of the truck the day after the accident is the same as shown on the diagram?

THE COURT: Has that been marked?

MR. MAGEE: Plaintiff's No. 1 in evidence.

THE WITNESS: One question, sir: Where is the chiller located?

MR. MAGEE: Over here (indicating on diagram). Here is the truck, load lines coming down.

Do you want to come down here and look at it?

THE WITNESS: I appreciate it.

(The witness approached the blackboard.)

THE WITNESS: That is the complete way it was set up?

No, sir.

BY MR. MAHONEY:

Q Let me show you another diagram.

THE COURT: What is that exhibit number?

MR. MAHONEY: This is Defendant No. 1, Exhibit No. 2.

THE COURT: That would be Transport?

MR. MAHONEY: Would you come down, Mr. Ward, and take a look at that diagram and see if that reasonably shows the arrangement.

(The witness again approached the blackboard.)

BY MR. MAHONEY:

Q If you can identify those?

A No, sir; that is wrong.

Q Would you tell us what is wrong about it?

A One reason --

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147

BY MR. MAHONEY:

Q Would you draw it the way you remember it, the winch truck, load line coming and hooking on to the chiller?

(The witness draws on the board.)

Q Now, could you identify that as you go along? This is the winch truck?

A Yes, sir.

Q What are those little markings you made over alongside of the truck?

A They are slots beside the truck where normally standards are put in. On this particular truck we had these slots plus a half-inch band alongside to reinforce them.

Q Would you mark the load line?

Was there a choker attached to the truck?



A Yes, sir, right here (points on drawing).

Q What are these lines that you indicate over here?

A Your load line or winch line; this load line comes off this winch, came through this gate block, through the gate block down to the chiller. If I remember correctly, I think this hook up here was over here farther on the chiller (indicating). Anyway, it came through to the gate block over to this column back to the gate block and back to the column.

Q When was that rigging done?

A We was moving the chiller farther back down this way and we traveled up this way by switching off to these columns for our pool.

Q I mean the position it is in now, when was that rigging done, the 15th, 14th, or 13th?

A I couldn't say for sure. It is possible it was done the second day.

Q Which would be the 14th?

A Yes, sir.

Q Who rigged it up?

A The steamfitters.

Q Would you take your seat again.

(Witness resumed the witness stand.)

Q On the morning of the accident, Mr. Ward, where were you?

A I don't know the particular area, but I was down at the chiller.

149 Q Tell me where to put the mark?

A Over to your left, sir. Close to the chiller. Somewhere in there; yes, sir.

(Mr. Mahoney marks on drawing.)

Q What were you doing, Mr. Ward?

A I was watching the chiller. We had these big six-inch gum rollers and we had quite a few underneath the chiller and they have a tendency of twisting, and I was sort of watching the rollers to make sure they stayed straight.

Q Did you have any concern with the weight of that chiller?

A Yes, sir; I did. It was one of the largest and biggest chillers installed, I think on the East Coast at that particular time, and it was top-heavy. It was two units stacked up on top and very narrow at the bottom. I don't think it would take too much for it to keel over.

Q What was the purpose of these lines that were hooked to that column?

A Well, the purpose of that was most of your load was on three columns. The load line came in through the gate blocks to take the load off the winch truck and transfer it to the columns. In other words, the column was taking most of the pull.

Q What was the purpose of the block placed in this position?

50 A Well, at that particular time we used that gate block to guide the load line onto the winch. The winch would have a tendency if it is an angle like that, would build up to one side and could get on the side of the winch and cut the cable.

Q If that were not there, would that line come straight off?

A No, sir, more to your left and ride on the side of your winch.

Q Now, at the time Mr. Dawson was hurt, Mr. Ward, were you in the position indicated by "X" or were you somewhere else?

A You mean where Mr. Dawson was?

Q Where were you when Mr. Dawson was hurt?

A I was at the chiller when he got hurt, approximately in the area you got the "X" mark.

Q Now, before that accident occurred, Mr. Ward, do you know of your own knowledge and the three days you were there with any of the Singleton men, were warned to stay away from the truck while pulling?

A Yes, sir, if I remember, I did tell them never walk in the direction of the gate blocks.

Q The gate blocks you indicated is right here (indicating)?

A You have one there and also down on the column and the chiller.

Q Why do you say don't walk in the direction of the 151 gate blocks?

A Well, if something every happens you just had it if it hit you right.

Q In your operation has a cable ever snapped before?

A This particular time the best I recall at least, I don't ever recall a cable ever broke as --

Q I mean in your operation has a cable ever snapped before?

A Cable? No, sir.

Q Now, when did you first learn Mr. Dawson was hurt?

A It was a few minutes after he was hurt. I don't know the particular time, in fact, he was hurt before I found out about it.

Q How did you find out about it?

A Well, on the morning -- we had moved this machine a few feet, I think, so we stopped for something; I think we stopped because a roller was twisted or something and became loose and I don't remember what Dawson was doing at the time. I think he was working at the chiller, I am not sure. Anyway, I heard a snap, I seen the load line had a jerk to it, and it slacked off some and I stood there a few minutes and kept looking at the winch operator.

Q Who was that?

A My brother.

Q Anybody except you and your brother from Contractors  
on the job that day?

A Just me, yes, sir. I thought the cable had got built up on the side of the winch and has a tendency to build up on the drum and it sort of snags, and I stood there a few minutes and seen it in motion and started walking to the winch truck and got to the truck. My brother came back and got in the truck, I believe, I said what happened and he said the gate block busted -- the choker busted. The cable came over and hit a standard that was in the truck.

Q Can you indicate on here what standard it was?

A I can't be sure, I think it was the second one on the left hand side.

(Mr. Mahoney marks on the drawing.)

Q It came across like that (indicating)?

A Yes, sir.

Q Did you see where the choker was, Mr. Ward?

A Yes, sir.

Q Did you see where the choker was, Mr. Ward? Did you find the choker?

A I asked my brother after he told me that I walked around the right side of the truck.

Q Over here (indicating)?

A No, on around where the choker was hooked into the side of the truck -- to your right. And I don't recall it was either partially hanging on the truck or laying beside the truck, 153 and it had broken.

Q Did you look at it?

A Yes, sir; I did pick it up and look at it.

Q After you looked at it, what did you do?

A I laid it back down where I seen it at.

Q Anyone else look at it after you?

A Yes, sir.

Q Who looked at it?

A The last person I seen look at it was a couple steam-fitters.

Q Did you see it since then?

A No, sir; I haven't.

Q How soon after this accident happened did the rigging operation start up again?

A I can't be precise, approximately within an hour or a few minutes over, something like that.

Q Who rehooked it?

A Steamfitters.

Q Now, were you present when a District of Columbia inspector came there some time on the job?

A After the accident, I do remember that several people talked to me. What they said to me or what I said to them, I don't recall.

Q Were there quite a few people there?

A Yes, sir; there was. After they heard there was an  
54 accident they came from upstairs and downstairs.

Q You have specific recollection of talking to a  
Mr. Wiseman?

A I don't. I could have, but can't remember.

Q We have testimony, Mr. Ward, on the night before the  
accident Mr. Cookley cut off a piece of this cable, about six  
feet, by means of burning a piece of it off. Did you know  
anything about that at the time?

A I don't recall any cable being burned off; no, sir.

Q Did he say anything about it to you?

A I don't recall; no, sir.

Q At the time of the accident, did you have any occasion  
to look at this load line?

A Yes, sir, while we was winching at it, even signaling  
to the operator you have 90 percent chance of looking at it.

Q What was it?

A It was good.

Q Did you look at it after the accident?

A Yes, sir; I sort of glanced at it coming back from  
the chiller.

Q What did you look at it for?

A Well, being a rigger, you naturally look at things  
not to see if anything is wrong.



Q Did it have a whole lay missing down the entire length of the cable?

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## CROSS EXAMINATION

BY MR. MAGEE:

Q You mentioned today, did you not, Mr. Ward, that you were presently the vice president of this rigging and hauling company?

A Yes, sir.

Q How long had you been with this rigging-hauling company?

A Approximately one year.

Q In this rigging and hauling operation is your brother also involved in that?

A Yes, sir, He is.

Q Is he with you in this rigging and hauling company?

A No, sir, he is not. He is just a rigger.

Q He is a rigger?

A Yes sir.

Q And how many other riggers do you have working with you in this United Rigging and Hauling Company, Inc.? Is that the correct word? How many other persons do you have working with you in United Rigging and Hauling Company, Inc.?

A Right. We have approximately twenty men.

Q You have twenty men?

A Yes, sir.

Q Now, how long have you been engaged in rigging and hauling?

A In civilian life I been in hauling and rigging, both combined, since approximately around '54.

Q And your brother also has been engaged in rigging and hauling with you during that period of time, has he not?

A No, sir, not all the time. He had a few years I think he didn't do rigging. He was working for an outfit in Pontiac, Michigan.

Q He is engaged with you and you know he is a rigger and operates winch trucks and engages in rigging?

A Yes, sir.

Q And you engage in rigging?

A Yes, sir.

Q Now, on December 15, 1964, when Russell Dawson was injured you were working for Contractors Transport?

A Yes, sir.

Q And on that day your position was that of a foreman, is that correct?

A I was dispatched that morning to work as directed with Singleton steamfitters.

Q You recall, Mr. Ward, your deposition taken in my office by Mr. Laughlin and you were asked this question, on page 5 of the deposition: Question --

THE COURT: Excuse me. Is this for the purpose of refreshing his recollection?

158 MR. MAGEE: Impeachment, Your Honor.

THE COURT: This goes to his credibility as a witness. All right.

BY MR. MAGEE:

Q "Question: What was your position with Contractors Transport Corporation? And you gave the answer: "Foreman."

MR. MAHONEY: Your Honor, that is not impeaching. I move that be stricken.

THE COURT: He may answer. It is a question for the jury to decide.

THE WITNESS: Repeat that again?

BY MR. MAGEE:

Q I'll make it more specific. "Sir, were you not working for Contractors Transport on December 15, 1964 when Russell Dawson was injured?" You gave this answer: "Yes, sir, I was working for them, yes, sir." Do you remember giving that answer?

A Yes, sir.

Q Then do you remember being asked this question: "What was your position with Contractors Transport Corporation?" and you giving this answer, page 5: "Foreman."

A Yes, sir.

Q You were a foreman at that time?

A Yes, sir, right.

Q Now, you were actually dispatched from your Contractors Inc., to do rigging at the Watergate project, were you not, sir?

A Yes, sir.

Q And in that connection you are familiar, being a foreman, you are familiar with work orders, are you not, sir?

A The work ticket.

Q I show you what has been produced and admitted into evidence as Plaintiff's Exhibit 2, the work order from William H. Singleton to Contractors Transport Corporation, dated November 13, 1964, to do a job on the Watergate, correct?

A Right, sir.

Q That deals with these chillers --three of them, the amount that was going to be installed in the basement of the Watergate project?

A Right, sir, three chillers.

Q And shows this, does it not, and it says: Receive, unload, store as necessary, and deliver to job site. You had done all of that up to that time?

A Yes, sir.

Q You had stored these chillers after you had unloaded them after they had been delivered to the city of Washington, correct? By you I am referring to Contractors Transport.

A Yes, sir.

Q Then you stored them in your yard until you received notice from the general contractor Singleton to bring them over to the job site?

A Correct.

160 Q Then you put them on trucks, you said, two trucks. Could you get more than two of these chillers on one truck?

A Well, we put the chillers on a trailer and they did haul them to the job site, yes, sir.

Q When you got to the job site you had a crain there?

A Yes, sir.

Q Then you rigged these cranes up and dropped each of the three chillers into the basement of the Watergate project and that was pursuant to this work order which is Plaintiffs Exhibit 2, to receive, unload, store as necessary, and deliver to the job site, is that right?

A Right, sir.

Q Then it also says: and rig into place when directed. Now, you were to take these to the job site and rig them into place when directed under this work order, were you not?

A Well, sir, this is the first time I seen this work order and -- is this Singleton or --

Q --this is the work order to your company for these three chillers.

A This is the first time I seen such, sir.

Q Seeing such a work order, if that was the scope of the work --

MR. MAHONEY: I object --

MR. MAHON: --you want to rig into place --

THE COURT: Hold a minute, don't answer. Is there an objection?

MR. MAHONEY: This contract has been read into evidence. This is a contract by Singleton. If he says he hasn't seen it he can't verify, well he cross examined. The language of the contract speaks for itself. This has come in time and time again.

THE COURT: Rephrase the question and ask him if he knows about this contract.

BY MR. MAGEE:

Q Do I understand you don't know about the contract?

A That particular bill there, no, sir.

Q And you do not know under this contract, for example, Contractors Transport was to rig --

MR. MAHONEY: He said he didn't know.

THE COURT: Wait a minute.

MR. MAGEE: --was to rig into place when directed?

A No, sir. My past experience with the union, with the steamfitters, we don't never rig anything in place, only the first drop. Being the foreman then, the foreman, according to our union contract, works on a day-to-day basis. They paid us,

I think then a dollar more an hour. In other words, being a foreman --you necessarily weren't foreman everyday, only when dispatched from the office and they paid you a dollar more an hour. We didn't have anything to do with it so far as work orders or anything like that, just the job ticket. We made sure they got signed in the afternoon and brought back a copy and gave a copy to the party we were working for.

162 Q Have you finished, Mr. Ward?

A Yes, sir.

O Now, let's go into detail on this. Now you say you were dispatched out with a driver who was your brother who was a winch truck operator and you were to work and pull these chillers, I assume, as directed, is this correct?

A Yes, sir.

Q And in connection with this matter your force arrived on the job at 7:00 a.m. in the morning, is this correct --you and your brother?

A Repeat this again, sir?

Q You arrived on the job on this particular day, December, 15, 1964 at 7:00 a.m. did you not?

A No, sir. We don't leave our yard until --our time starts at the time we left the yard and we left at 7:00 o'clock.

Q You left at 7:00?

A Yes, sir.

Q When would you say you got to the job --by 7:30?

A I would say 30 minutes would be a good time.

Q Now, the winch which you had placed on this board was the property of Contractors, Inc., is this correct?

A Yes, sir.

Q You brought this winch to the job site and your brother operated it?

A That is right, sir.

3 Q And you had also brought the gun rollers which had been placed under the chiller?

A That is right.

Q You had brought the jacks which you used to jack up the chiller in order to get these rollers to move on occasions, is this not right?

A Yes, sir.

Q You also had on this winch truck these chokers and gate blocks to be used in connection with setting up a rigging?

A A We brought chokers for the job to hook up gate blocks.

Q And this equipment shown on this drawing which includes the winch, and load line coming off the winch and attaching to the chiller were brought there by Contractors, is this correct?

A Yes, sir.

Q And you have chokers here and chokers here (indicating on drawing on board). These chokers were brought on the job site by Contractors that day, were they not?



A Yes, sir.

Q And these chokers were the property and were being used in the performance of the pulling?

A Excuse me, sir. They wasn't brought that day. The chokers was left on the job.

Q Well, regardless when they were brought, they were brought by contractors and were Contractor's chokers, is that correct?

A Yes, sir.

164 Q Now, in connection with this Ford stake-body truck. These are marked in little squares are wood stakes, are they not, which go into holes of the floor of the truck as stanchions?

A The slots on the side of the truck there are open but you can put standards in them.

Q You had standards in?

A Yes, sir, there were standards in the slots.

Q You said these were wood standards?

A Yes, they was.

Q Now, in your industry are steel standards available?

A We don't normally mess with standards too much. We do have some wood ones to more or less keep our stuff from sliding off the truck.

Q There are steel standards used when using cables in this type of operation? Are they available to be used on a truck of this type?

A Yes, sir.

Q Now, your company specializes in what we call real rigging, heavy rigging and rolling, isn't that correct?

A Repeat that again.

Q Your company was engaged in what we call heavy rigging and hauling at the time, is this correct?

A Yes, sir.

Q This was the largest chiller or piece of equipment, I assume, from what you said had every been moved on the East Coast, is that correct?

A Not the largest piece of equipment, the largest chiller.

Q Largest chiller, yes. And what was its gross weight, do you remember?

A I couldn't say for sure but the unit we was moving was close to fifty tone, I believe, sir.

Q When you first started pulling this chiller you ran into problems, didn't you, during the course of this operation? The winch truck started to move, did it not when you tried to move it, it kicked?

A The truck did kick some, sir.

Q And in order to relieve that you put chokers on the truck, did you not, put it against one of the pillars and put another choker and put a sling around one of these columns in this area to hold this truck in position so you could pull the chiller?

A We might have, sir, I don't recall, sir.

Q What do you have to do when you start to move a chiller and the truck moves instead of the chiller?

A You normally would go down there and put an extra gate block next to the chiller.

Q You would take a gate block and probably attach it to this column?

A Or either go between chillers, sir.

166 Q You would do this to keep it from moving?

A You would do it to take more strain off the truck, sir.

Q Now, you have stated that on this morning when this operation started you had moved this chiller, after you had looked at this rigging you thought it looked all right? This is as I understand your testimony, before you started to pull it?

A I don't recall looking over the whole rig or not, but I did look at the gate block and cables to see if they was running through the blocks all right, yes, sir.

Q Did you look at the gate blocks and chokers that you put around the concrete cable to hold the truck?

A I looked at the hook-up, yes, sir.

Q Was there any bagging or anything around that particular choker?

A Any what, sir?

Q Bagging -- insulation, did you have cloth or material wrapped around this gate post?

A I didn't notice it, sir.

Q You didn't see anything, is that correct?

A Well, I didn't look from the side of the gate block, I looked over to the gate block, sir.

Q You didn't see any lagging or where the chokers were on any of the columns is that right?

A That is right.

Q You looked at this sort of rigging because this is the one that was going to be used to pull the chiller?

67 A Yes, sir.

Q You looked at your choker which was attached here (indicating on drawing) and went over the edge of the truck and hooked on the side, is this correct?

A Yes, sir.

Q Now, the purpose of this was to pull this line to ... straighten out the pull lines, is this correct? This choker was drawing this line to one side, to the right?

A It was holding it to the right.

Q Holding it to the right to get an angle here?

A Yes, sir.

Q I believe you said this isn't quite correct because this choker was going more over here? .

A Yes, sir. I believe more to the left.

Q I'll put a red dotted line here. Is this correct?

A Approximately, yes, sir.

Q Then it would go over like that to the block, is that correct? (Indicating on drawing)

A Yes, sir.

Q Now, do you know how far from the truck the chiller was that was being pulled?

A I said a hundred feet but it could have been less. It was between 60 and a 100, I guess --somewheres in that neighborhood.

Q In addition to the equipment you brought, did you bring sledge hammers to hit the rollers?

168 A I would say yes because normally we do.

Q You stated during the course of this operation you were down in this area, is this correct, marked by "X" on Defendant's Exhibit No. 1 for Identification No. 3, is this correct, you were in this area?

A Yes, sir.

Q Your brother was operating the winch, he was in the cab, is that correct?

A Yes, sir.

Q In order to get him to move or stop you have to signal him, wouldn't you?

A Yes, sir, he'd have to have a signal.

Q Would you tell the jury how you would say wind when you wanted him to turn the winch? What would you do with your hands?

A To pull a load you'd either do this with one finger, or two (circular motion).

Q You'd wave your hand to wind up the winch. To stop how would you do?

A Hold up your hand.

Q Now there came a time you started this operation and you noticed something was wrong with one of these six-inch gum rollers that was jamming or something under the chiller, is that correct?

A Yes, sir.

59 Q So you stopped the operation with a signal?

A Right, sir.

Q Then at that time did you say: somebody get a hammer so we can knock this loose? Did you have a sledge hammer to break it loose?

A I don't recall exactly what happened, but there was no hammer at the chiller.

Q You had to send someone up here to get the hammer off the truck in order to break loose this jammed roller. That would be in ordinary practice, wouldn't it? If they jam how do you release them?

A Like I say, I don't recall it was jammed. It could have been we needed a hammer to guide a chiller. We might have been in a position, say going to the left side --

Q --you didn't have a hammer in your hand?

A No, sir.

Q So you had to get a hammer to conduct this operation, you'd go up to the truck, it was on the truck, wasn't it? Or whoever was going to get it would have to go to the truck to get the hammer, correct?

A Yes, sir.

Q You say you don't recall or not this occurred and someone asked for a hammer? You don't remember this?

A Someone had to ask for it but I don't know who at the time. I could have asked for it but I don't recall.

270 Q Then when you went to send him to get the hammer this operation stopped, isn't that correct?

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BY MR. MAGEE:

Q The operation stopped and according to your recollection someone had to get a hammer and you might have asked for it?

A They could have asked for a hammer, or myself, just to straighten the rollers out. That don't mean we had to stop moving the the chiller. We could have it pretty soon or then.

Q But it was stopped?

A Yes, sir.

Q Did you see Mr. Dawson in the area at the time you asked for the hammer?

A He was working on the job, I couldn't say --

Q --as a matter of fact he was helping jack up these chillers in order to get the pressure off so you could move it?

A I don't recall.

Q Who was doing the jacking, the rigger? Not you, you weren't jacking it, the steamblasts were, right?

A Yes, sir.

71 Q You and your brother were doing the pulling, operating all this equipment?

A No, sir, I couldn't pull that equipment.

Q I didn't mean that. Your brother was running the winch from the cab to pull the chiller?

A Right, sir.

Q You were here watching to see it was being done as it should be, you being the rigger?

A That is right.

Q Then the winch started up after it stopped the second time, is this correct, that morning?

A Far as I remember, yes, sir.

Q And then after the pressure got on the load line all of a sudden you heard a jerk or snap, is this correct?

A Yes, sir.

Q Then you saw this line pull to the left in other words, it straightened out?

A Yes, sir, came off and had some slack, yes, sir.



Q You rushed up and called to your brother who was in the cab and your brother said to you the choker broke, the gate-block broke and it hit a man?

A Yes, sir

Q You remember him telling you that?

A Yes, sir, he told me.

172 Q Now, the man that was hit was over fifteen feet away, was he not, by this block of wood?

A I couldn't say, sir, I didn't see the man.

Q Did you see him where he was lying on the ground?

A No, sir, I never did see him even after he got hurt.

Q Now, after your brother made this statement you went back as I understood and you examined this area and found that this choker had broken?

A Yes, sir.

Q And this choker was lying on this side of the truck?

A Yes, sir.

Q And this cable of course had gone over here and was lying in that sort of direction, from the winch down to this point where it had fallen after the gate block broke, is that correct?

A Yes, sir.

Q Now, you discovered where you have an "X" on this particular exhibit that the stanchion had been knocked off by the cable or the gate block?

A The what?

Q You found this stanchion had been sheered off at its base?

A Yes, sir.

Q That wooden stake, according to your brother, hurled over and struck Mr. Dawson?

A Yes sir.

73 Q On December 15 did you inspect the cable that was being used?

A I don't remember if I had, sir.

Q You don't remember?

A No, sir.

Q You recall when your deposition was taken in our office on March 13, 1966 and you were asked this specific question -- on page 20, last question at the bottom of the page the very question I just asked you: "On December 15 did you inspect the cable that was made?" / and you remember giving this answer: "Yes, sir, I looked at the hook-up after the hook-up was made."?

A Sir, referring to the cable, load line, or chokers --

Q You remember giving that answer or not?

A Again, are you talking about the load line or --

Q --hook-up.

A You said cable, sir. I did look at the hook-up, yes, sir.

Q You remember giving an answer, saying: "Yes, sir, I looked at the hook-up after the hook-up was made"?

A Yes, sir, I said I looked at the hook-up. You said "cable".

Q So you had looked at this hook-up?

A Yes, sir.

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BY MR. MAGEE:

Q We'll go to the next question: Did you inspect the cable? And did you give this answer: To the best of my knowledge I try to keep an eye, look at most of the equipment we use, what equipment could get damaged so fast, so quick at different times. In other words, I could not see the whole operation to supervise it.

Do you recall giving that answer?

A Yes, sir.

Q Then you were asked the question which I asked you before: On December 15, did you inspect the cable that was used? And you remember giving this answer, page 21? "Yes, sir, I looked at the hook-up after the hook-up was made." You recall giving that answer?

A Yes, I recall that.

Q Did you look at this hook-up after the hook-up was made?

A Yes, sir.

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Q Now, when you looked at this choker did you not, which was on your truck?

A That is what I was referring to, sir.

Q And in that connection you were asked: What condition did you find the choker and cable when you looked at it?

A It was in good shape, sir.

Q After the accident you inspected the cable, is that right?

A Yes, sir, I looked at it. I didn't run my hand down the line to check it.

Q So you wouldn't know whether a lay was missing from the load line cable or not if you hadn't actually inspected it, correct?

A My experience with a lay you could tell it by looking at it.

Q Do I understand you that you could tell us whether or not a lay was missing from that cable today?

A As far as I remember it wasn't, sir.

Q Now, let's put the question this way --

A --excuse me, sir. When talking about the cable are you talking about the load line? Cable could be a choker.

Q I'm talking about this load line.

A OK, sir.

Q Did you inspect that load line to find out whether there was a lay missing from it?

A I looked at it but didn't inspect it.

Q Could you tell us whether or not a lay was missing?

A By looking at a lay as actually a part of the cable itself, this was a 5/8 load line which would be approximately 1/8 of an inch or 3/16, and usually when they pop loose from a winch you can notice by looking at it but they could be cracked and still be in the cable.

Q Now, Mr. Ward, actually, isn't this what happened: after you first tightened the load line to pull this cable it actually pulled to the left and then you put this choker on the truck? Is that what happened?

A Repeat that again, sir?

Q You tightened the line up, that is, the cable, to pull the chiller. And it pulled a bit to the left of the truck?

A Yes, sir.

Q And so you put a choker on the truck to get this angle straightened out on the loadline, is that correct?

A I don't remember, sir.

Q In our office then, were you not asked this question --

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178'

MR. MACEE: All right, sir.

Mr. Ward, actually, this morning of the 15th when you were moving the last chiller you had to move the distance of approximately 70 feet, correct?

A Approximately, sir.

Q Now, go back a moment. When you started winching this unit the second time -- remember, you had to stop in the course of pulling the chiller and something happened to one of the rollers and there was a stop in your effort to pull the chiller over the ground, you recall this?

A Yes, sir.

Q Now, when you started winching a signal was given after that for the operator to take up this and put the pressure on the line again. This happened, did it not -- the winch operator? You had stopped one time, you recall this, because one of the rollers or something was not straight or jammed under the chiller, you recall this?

A Yes. We did stop one time.

Q And then you started winching again and there came a time when that line gave a jerk and you heard it snap, is that correct?

A Yes, sir.

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BY MR. MAGNE:

Q After you started to winch this up a second time and you heard the jerk in the line and then the cable, what did you do, did you go up toward the cab or not where your brother was operating the winch?

A Repeat that again, sir?

Q Yes, sir. After you heard it snap or jerk in the line after you started up the second time, is this correct?

A No, sir, we didn't start it up a second time.

Q Didn't you have a stop and pull the second time?

A At the time of moving this chiller that morning, we moved it approximately 2 or 3 feet and I heard it was something said about a roller being crooked or something. I don't recall, like I said, we stopped at that point we seen the roller crooked, or what. We only stopped once, that was the snap of the cable.

Q After that snap of the cable occurred what did you do?

MR. MAHONEY: Your Honor, isn't this repetitious?

THE COURT: I don't remember whether it is or not.

Leave it up to the jury. Let's proceed.

A What did I do?

Q Yes, sir.

A I hesitated for a few minutes for the simple reason  
184 a cable will have a dendency of building up on the side of the winch. After it goes around a couple times it will flip back off right or left, and at first that is what I thought happened.

Q After you stopped the rig what did you do?

A Like I said, I hesitated first, I was looking at the truck and I didn't notice that the gate block or anything was busted so I guess I waited 2 or 2 1/2 minutes before I started up to the truck.

Q You did go up to the truck?

A Yes, sir, I did.

Q And were you able to observe the cable up to the truck?

A I looked at it, yes, sir.

Q This cable had not broken, had it?

A No, sir.

Q Now, when you went up to the winch, up the line of the cable, I think you told counsel on direct examination you had a conversation with your brother, is this correct?

A Yes, sir.

Q Now, in connection with that conversation didn't you ask your brother what hit the man?

A No, sir. I did ask him that but first after I looked on the truck I seen the load line was to the left.

Q By that way I use the pointer, by load line to the left you would mean that it was in this area, being left? (Indicating on drawing)

5 A Yes, it was over to the left of the truck.

Q To the left --the red line, Your Honor.

And then give us the rest of the full conversation you had with your brother at that time as you remember, Mr. Ward?

A Well, I remember asking him what happened and he told me the line broke, or choker or cable, whatever it was, broke, and went over and hit the standard which in turn hit this guy. I stood there, I couldn't figure out what happened. I seen



the load line was still hooked up so I went around to the right of the truck to see what happened and this choker was broken

Q Now, with reference to the choker --may it please the Court, I requested the witness to bring into court actually a choker, a block, Your Honor, and one of the attachments they use which I'd like to produce at this time and have the witness identify it.

(Exhibit removed from box and placed on counsel's table.)

I'd like, Your Honor, to have this marked as our next exhibit.

THE DEPUTY CLERK: Plaintiff's Exhibit No. 49 marked for Identification.

(Plaintiff's Exhibit No. 49  
(Choker) marked for Identification.)

BY MR. MAGEE:

Q I show you an exhibit which is marked 49 and ask you  
186 if this is a type of choker which was used on the truck at the time of the accident?

A Yes, sir, it is approximately the same size and everything, except one thing: this is what you call a lead rig here, you do have a type which --

Q Yes, sir. Explain to the jury the difference between this choker and one used?

A This is what I call a leader eye. In other words the lead end that come off here is threaded on maybe a couple times into the lead here and they put this clamp on it. The other type you have is a dead end, it is threaded back through the lead maybe six times.

Q Do you recall which was being used, leader or woven type?

A Best I could remember it wasn't this type, it was the woven type.

Q This is the correct length and size and this is a 5/8?

A It is 5/8; it is six feet long, but again, the best I can remember it was a 5/8 choker.

Q Now, this choker, these are the two ends that went into the gate block, is this correct? For example, if I may demonstrate, Your Honor, went over the edge of the truck and was hooked on a bar which is below the truck?

MR. MAHONEY: If could be better if the witness did the demonstration.

THE COURT: Let the witness tell it.

BY MR. MAGEE:

Q Would you demonstrate how it was hooked over the edge of the truck?

A To begin with, the bed of the truck is approximately 8 feet wide. As best I recall we had a six-foot choker and it was doubled. Again, I don't remember, it could have been eight-

foot. I tell you the reason why. If you double a choker, bring it up through the eye of this truck and this choker was doubled it could be too long for a hook-up. In other words --

(The witness approached the blackboard.)

This choker which is in this truck here, this bed is eight feet wide. The hook-up we had here was on this gate block, or snatch block, in line with this winch. You couldn't take a choker and double it and expect this gate block to be in line with this winch. So that is the reason.

Now, we occasionally put shackles on our chokers to make the distance match up for a winch. If I remember correctly, we did have a shackle on this choker.

Q This choker then went over the edge of the truck. Was it hooked to something on the edge of the truck?

A It was hooked in a pocket on the side of the truck.

Q That is steel, is it not?

A Yes, it is.

Q This went into the pocket and this went over to the snatch block?

(The witness produced a snatch block)

188. MR. MAGEE: Could I have this marked?

THE DEPUTY CLERK: Plaintiff's Exhibit No. 50 marked for Identification.

(Plaintiff's Exhibit No. 50  
marked for Identification.  
(Snatch block))

THE COURT: What do you call that green object, No. 51?

THE WITNESS: As they are called it's gate block. They are known sometimes as snatch blocks, but they vary in different sizes.

Again: all this equipment here is no way to do with the equipment used that day. This is just to demonstrate it.

Now, this gate block, or snatch block, to unhook it you flip it over and your load line goes inside. That is --

BY MR. MACNE:

Q That is used here because you don't want to go way down to the end of the line and bring it through like a regular pulley, is this correct, Mr. Ward?

THE COURT: Keep your voice up.

THE WITNESS: I say I might have to take this back, it is not working. Anyway, this catches in here. Now, this gate block was hooked in the choker that came through the side of the pocket of the truck like so. And this load line, the winch line and load line comes down, went through this shiv here. The shiv turns.

Q The load line, for example this cable -- I won't pick it up -- is a piece of cable gone through the top of the line.

THE DEPUTY CLERK: Plaintiff's Exhibit No. 51 marked for Identification.

(Plaintiff's Exhibit No. 51  
marked for Identification.  
Cable)

THE WITNESS: Now, this is yor winch line, or load line coming down through the block like so (demonstrating). This wheel turns.

BY MR. MAGEE:

Q And this was put on to pull it to the right in order to change out the lead of your pull, was it not?

A To keep it in line, also to --in other words, if you wouldn't have the gate block the cable would track over here. At the time I don't know whether it was the truck position or what, but any time you can't get this winch in line of the pull, in other words, there might be something in the way or something or other and you put a gate block on the side of the truck to guide it onto your winch.

MR. MAGEE: Your Honor, I would like to now offer into evidence these three exhibits.

THE COURT: Any objection?

MR. MAHONEY: No objection, Your Honor.

THE COURT: All right. No objection. May be received.

190 MR. MAHONEY: One thing, Your Honor, please. I think it should be pointed out first whether or not that load line was the same size as the load line used on the day or whether it is just brought here --

THE COURT: Was the load line the same size as the one used on that day or is this just for purposes of demonstration?

THE WITNESS: No, sir. If I remember correctly I have a 5/8 inch link on the winch, sir. And this is a 1/2 inch. A 1/2 inch is approximately -- a safety load is approximately around 6 tons. A 5/8 inch link is approximately 9 tons.

BY MR. MAGEN:

Q And is the size on Plaintiff's Exhibit 49 a 5/8?

A I haven't checked the checker, sir, but it is 5/8, I'm pretty sure.

Q Now, I show you another exhibit which I've like marked.

THE DEPUTY CLERK: Plaintiff's Exhibit 52 marked for Identification.

(Plaintiff's Exhibit No. 52  
marked for Identification.)

BY MR. MAGEN:

Q I show you another piece of equipment and ask you if you can identify that, Mr. Ward, to the court and counsel?

A This is what you call a shackle. A lot of people call them clips. If you went into a steel supply place and asked for a clevis he would also bring you this. But the book calls for it as the name is, a shackle.

91 Q Was this type of equipment also used in setting up the snatch block?

A Yes, sir.

Q Explain to the Court and jury how you use this type of equipment in setting up a snatch block?

A Well, a shackle would be used for different reason and different purpose. The reason we was using that --I don't recall the reason we was using it that day but I think we was using it as far as I remember --in other words-- by the way, if you ever put a shackle on, always back off a quarter of a turn, otherwise it will jamb.

The way we was using that shackle was to shackle these two eyes together. The simple reason is if you put these two eyes on this snatch block they have a tendency if the winch did build up on the side, let's say, and got some slack it would have a tendency of jumping off the hook. Also, we could have been using it for extending our distance to the center of the truck, but if I remember correct, we was using that day, that particular morning, the hook-up I looked at, it was on the eye like so (demonstrating).

Q You can put that down, Mr. Ward; if you will. This -- I am referring to Defendant's Exhibit 49, is similar to the type of choker which broke and released the lead line, is this correct?

A Yes, sir.

Q You may resume your seat.

192 A One more thing, sir. This shackle is a 3/4 inch shackle and most of your patent shackles --you have off-brand shackles-- most of the patent brands have a size about 3/4 and this is good for 4 1/2 tons. The reason I bring this out, the shackle

is your 4 1/2 hour is the single reason the choker is broken, this is your case for 9 years.

Q Yet the choker broke?

A Yes, sir. That is all you brought it out, sir.

Q You say to the jury that. (Witness resumed the stand.)

When you went back to the lunch truck after talking to your brother you found that the choker, which is Plaintiff's Exhibit 49, had broke and released the line. Then what further was said in this conversation with your brother?

A I don't recall, sir. I walked around to look at the choker.

\* \* \*



193' you are offering it to effect his credibility as a witness.  
Two entire different things.

You are not trying to impeach this witness?

MR. MAGEE: No, Your Honor.

No, you recall that on March 13, 1969, last year, a deposition of yours was taken. You came to an office on K Street and questions were asked you and you answered them in regard to this case, you remember that?

A March of last year, yes, sir.

Q On page 14 of that I show you some testimony and ask an answer.

"Question: I want to interrupt you again. Your brother was the winch operator --this starts on 13 and you continued your explanation of this conversation and you stated there in answer to a question as follows: Yes.

MR. HEFFELFINGER: Your Honor, I object.

THE COURT: Objection overruled. Let him proceed.  
There is no harm being done in this.

BY MR. MAGEE:

Q "I asked him what happened and he said the gate block busted so I walked around and looked. The gate block didn't break. If I remember correctly the gate block was still on the loading cable going to the truck. I said: what hit the guy? I said the gate block is still on the cable. He said --referring

to your brother-- an oak standard on the truck."

Then Mr. Kehoe asked a question, "Stake?" And you answered yes, you said he thought it hit him and I said where did it hit him? He said: in the neck, and it was a good 10 feet from the truck; there is a car in front of it, it was dark at night. If you happened to look in that particular area you couldn't see a man."

"Question: The lighting was good or bad?

"Answer: It was bad, terrible."

Now, does that refresh your recollection as to what was in that conversation?

A Yes, you asked me --

MR. HEFFELINGER: Your Honor --

THE COURT: Wait, Mr. Ward. The question is simple: does that what he just read refresh your recollection?

THE WITNESS: Yes, sir.

MR. HEFFELINGER: Your Honor, my objection is that I think if he wants to refresh his recollection he should have read the rest of it.

THE COURT: Then you read it when your time comes to examine.

MR. MAGEE: I'll answer the rest of it, Your Honor.

Continuing your answer: "I asked my brother, did he see him and he said no. The person he didn't see --

195.

MR. HEFFELFINGER: Just a moment. I object, Your Honor. He is not reading this correctly. Instead of the person--

THE COURT: Just a minute. Read it like it is.

MR. MACEE: "The reason he didn't see it he was using a mirror to look and the mirror was focused back to where we was working."

That is what you want, counsel?

You recall that portion of your testifying in that fashion?

A Yes, sir. Could I ask something, sir? The question, did you ask me did I talk about --

THE COURT: He asked you if you testified as he just read the testimony to you?

THE WITNESS: I mean before that, sir. The question before that. He asked did I talk to my brother about the line. Well, it is nothing there, sire, where you asked me did I talk to my brother about the line because I described it like I did before, 15 or 20 feet.

BY MR. MAGEE:

Q I understand that, sir. Do you recall how long that oak standard was that struck Mr. Dawson that was sheered off the truck?

A Two to three foot, somewhere around there.

Q Now, Mr. Dawson, at the time you gave this deposition you prepared a drawing, did you not, of what you recollected in regard to this accident?

A Mr. Dutton is sitting over there.

\* \* \*

BY MR. MCCOY:

Q I show you Exhibit 10, which is a drawing, and ask you to look at this, Mr. Dutton, and tell me whether or not this is a drawing you prepared at the time of your deposition?

A Yes, sir, it was.

Q Marked at that time Plaintiff's Exhibit 1 for identification. Is that your signature on the top of it?

A Yes, sir, it is.

Q And the date of the deposition, March 13, 1969?

A Yes, sir.

Q Now, this drawing substantially shows the drawing which you have placed on the picture here today, does it not, sir?

A Well, it is a little different. I got the truck, I would say on this paper more in line of what I have here.

Q In other words the drawing shows the truck as being straight but instead of that should be on an angle?

A This shows a little angle there --

THE COURT: Walk in front of the jury so they can see it.

(Passed to the jury.)

197

MR. MAGEE: I offer that in evidence, Your Honor.

THE COURT: No objection? It may be received.

THE DEPUTY CLERK: Plaintiff's Exhibit 53 received  
in evidence.

(Plaintiff's Exhibit 53 received  
in Evidence.)

BY MR. MAGEE:

Q Mr. Ward, going to the time when you first looked up this rigging or the rigging was hooked up to the chiller for the purpose of pulling it, when you attempted to do this, didn't you have to change your set-up in order to take care of some angle of your pull?

A Repeat that again, sir?

Q When you first set up to move the chiller and started your winch, didn't you have to make some change in your set-up in order to change the angle of your pull?

A Yes, sir. Anytime you didn't get the right angle of a pull you had to change it, yes, sir.

Q Now, the trouble, if I may point to your map as you indicated earlier, when it came off this winch line as you started to pull it was hooked up straight but that was not the correct angle, is this correct?

A Hooked up straight?

Q You weren't getting the right angle you wanted to pull the chiller?

98 A Right.

Q Because of this, in order to get the correct angle, this choker which I am pointing to, it was attached to the pull line in order to get a correct angle?

A Yes, sir, to hold the line to the arch.

Q By attaching this choker you got the kind of pull which you used on the load on, is that correct?

A Right, sir.

\* \* \*

199 MR. MCGEE: Yes, sir.

BY MR. MCGEE:

Q Now, was any padding of any sort inserted in the area where the snatch cable line went over the edge of the truck, if you remember?

A Well, best I can remember, sir, we were using some wood prior to this hook-up and like I said, I don't recall seeing any padding on the truck at that particular morning.

200 Q Did you see any padding in the area where this snatch block went into the hole on your truck? Was there any there that morning when you saw this cable?

A Again, while I looked at the hook-up, sir, I was -- facing the diagram from left to right, if there was any padding it was more or less behind where the choker comes up. If there was some there I couldn't see it probably.

Q You mentioned wood. You know whether or not you used any wood on this equipment that morning? I want your best recollection.

A I don't remember, sir.

Q You can't say whether any wood or padding was used or not then, is this correct?

A That is right, sir, I can't recollect.

Q What is the purpose, if you know, Mr. Ward, of putting wood or padding in this area where the metal cable goes into the metal section of the truck?

A Well, wood is to cushion the cable away from the metal and wood is not the best thing to use, but it is better than nothing if you don't have anything at the time.

Q If nothing is there what could happen, in your experience as a rigger?

A Well, metal will cut cable if you get enough load on it.

Q And you were quite surprised when this cable --snatch cable let go, were you not, sir?

A Yes, I was.

201 Q Because it was quite a strong cable which you understood, or thought it was, correct?

A Yes, sir.

Q You were never able to determine in your own mind, were you, why it broke?

A Well, in personal thoughts of the thing, my opinion was it was just a bad cable.

Q Bad cable?

A Just a bad cable, yes, sir.

Q What wasn't discovered, I, you have already testified to, before it was put on and used in this truck?

A What is that?

Q That was not discovered before it was put in use on this truck? In other words, you didn't find out it was bad until after it broke, is this correct?

A What I meant it was bad, sir, was this: far as I could see it was a good choker but it must have had a bad defect in the choker, didn't have to be outside. It could have been inside.

Q Now, Mr. Ward, you looked at this choker, did you not, sir, after it had parted?

A Yes, sir.

Q And you laid it down whereafter you looked at it?

A Best I recall I might have moved it a few feet from where I picked it up and looked at it. It was to the right of the truck, close to the hook-up, in that vicinity.

Q Now, do you know what happened to this broken cable?

A No, sir, I don't.

Q You have already testified earlier that this cable did belong to your company when you looked for it to take it back with you?



A Well, sir, this stuff was left on the job and it was, if I remember correctly, --there was chokers there other than what we were using.

Q This was your choker you testified to?

A Far as I can remember this was our choker.

Q All this rigging which was used in this rigging was your rigging because you brought it there for the purpose of rigging, isn't that correct?

A Yes, sir; it was left on the job.

Q Now, after this accident occurred, people were in the area were they not, Mr. Ward?

A Yes, sir, they were in the area.

Q Now, at the time of the accident, first, did you give any written report to anyone at the scene of the accident?

A After the case came up I got to thinking about it and seems I do recall several people talked to me but I can't recall what they said or anything.

Q Do you recall having actually talked at some length with Mr. Wiseman who was the District of Columbia inspector of safety regulations who investigated the accident at 8:30 that morning?

203 A I could have, sir, but I don't remember.

Q And your brother was with you at the time that any conversations would have occurred, he was there with you at 8:30 as the winch operator, was he not?

A Yes, sir.

Q And if Mr. Wiseman talks to you your brother was present and didn't he also talk to your brother according to your best recollection as to how he operated the winch that day?

A He was present on the 15th, sir; I don't recollect if he was present with me or not, sir.

Q Now, Mr. Dawson, in order to refresh your recollection about having talked to Mr. Wiseman I am going to show you Plaintiff's Exhibit No. 10, his report which has been received in evidence, and turn over the pages of this report to page 4. This is a statement, is it not, in writing?

A Yes, sir.

Q Does that refresh your recollection that you did talk to Mr. Wiseman and he did write out a written statement for you of some of the things you told him and you signed it?

A That is my signature, sir, yes, sir.

Q This occurred December 15th, is that correct?

A To tell you the truth I don't remember the statement. It is my signature.

Q It also puts down a time when he actually talked to you at the site of the accident, does it not, sir?

204 A It has got 12:10, yes, sir.

Q And you were still there at 12:10 that day?

A Yes, sir, I was far as I remember.

Q Now, you notice that he lists you as the foreman?

A Yes, sir.

Q Now, did you tell him what was put forth in the statement, that I was working with the pipefitters and we had just finished jacking up the cooler?

A I don't remember the statement now, sir. I swear I don't.

Q Do you remember telling him in placing the rollers under it?

A I don't remember that.

Q And the pipefitter went after a beater, a hammer?

MR. MAHONEY: Your Honor, he said three times he doesn't remember the statement.

THE COURT: The jury heard what he said.

THE WITNESS: I don't remember it. But it is my signature.

BY MR. MAGEE:

Q You do remember there was someone went to get a hammer, you already testified to this, isn't that correct?

A Yes, sir.

205 Q And that hammer was to be used in connection with the rollers?

A Yes, sir.

Q And a man did go to get it and he got hurt, isn't this correct?

A That is right, sir.

Q And then this does bear your signature?

A Yes, sir.

Q . You also learned that Leonard C. Ward was operating the  
vibron, is that correct?

A Yes, sir.

Q And he also learned that Mr. Corkley was the super-  
intendent for Singleton, is that correct?

A I don't remember the name but if he was superintendent,  
he was superintendent.

Q These facts are all correct that appear in this state-  
ment far as you know or am I overstating it, sir?

A That is my signature, sir, yes, sir.

Q Then to turn over further and the name Contractors  
Transport Corporation appears with an address, that was your  
employer on that occasion, was it not?

A Yes, sir.

Q And it has underneath it again the statement that Lee  
Ward was the foreman for the riggers, which you were at the time,  
the two of you -- you were supervisor for your brother, were you  
not?

\* \* \*

206

THE WITNESS: Yes, sir.

BY MR. MACHER:

Q Then we come to another name, the name appears here  
-- Don Abrams. And Don Abrams if I remember your testimony, was  
your boss at this time?

A Yes, sir, he was president of the company.

Q Then appears the statement out of the order which I showed you, to do the work, which reads: receive, unload, store as necessary, deliver to the job site and rig into place when directed. He wrote this down correctly as far as you know?

A Who are you talking about?

Q Mr. Wiseman.

\* \* \*

208

BY MR. MAGEE:

Q Mr. Ward, you have testified that just before the accident the cable jerked. Now, at that time did you give any warning to anybody in the area? Did you say anything to any of the people in the area?

A I don't remember, sir.

Q Did you hear any warning given by anyone else at or about that time or shortly before the accident?

A No, sir.

209

Q Now, Mr. Ward, do cables sometime under strain make a noise of any kind?

THE COURT: I don't understand the question. Rephrase the question.

BY MR. MAGEE:

Q When a cable is pulling or under heavy strain does it sometime give off a noise?

A Well, there are times it will give off a noise but there is a reason for it most of the time.

MR. DUFFELINGHAM: I'm sorry, I didn't hear that.

THE WFL 133: Usually there is a reason for it to give off a noise.

BY MR. DUFFELINGHAM:

Q What basically would cause a cable being wound on a winch to give off a noise, Mr. Word?

A Sometimes it might be winding up on the side of your winch. Another time it would be a snatch block or gate block --the pulley inside-- they have known to get bent by this pulling, not tracking on it, and will make a sort of squeaking noise.

Q Does it ever scream or give out a squeek or anything of that sort during a cable operation or is it more a squeeking? What type of noise does it give off?

A Just a squeaky noise, I guess.

Q Now, when a cable would start to squeek what would you do, wouldn't you stop the operation there and then and check it?

A Yes, sir. You normally stop the operation or you could, maybe walk and look and see what is causing it, you know.

Q But normally you'd stop it if you heard the noise?

A Yes, sir.

Q Then investigate to see what was happening, is this correct?

A Yes, sir.

Q None of this occurred that morning?

A Could have, I don't remember, sir.

Q You don't remember?

A No, sir.

Q Now, Mr. Ward, you have said your explanation, your opinion rather, is this cable broke because it had some kind of defect in it. You remember stating that?

A In my opinion, yes, sir.

Excuse me, sir. We talking about the cable or choker?

Q The choker, the piece of cable with the loops on the ends.

A Yes, sir.

Q Now, had you actually inspected that cable, inspected it before the accident?

MR. MAHONEY: Talking about the cable or choker?

MR. MAGEE: I am talking about the choker. Your Honor,

\* \* \*

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THE WITNESS: You mean did I pick it up and look at it?

BY MR. MAGEE:

Q Yes, sir.

A No, sir, I didn't pick it up and look at it.

Q Mr. Ward, in your direct examination you stated that if you instructed any other people on the job, even the steam-fitters to do something in the course of a rigging operation they'd do it, is this correct?

A Yes, sir. I/have no trouble with that.

Q Mr. Ward, you have been in the rigging business in the District of Columbia for how many years did you say?

A District of Columbia? I haven't been in the rigging business. Mostly the employer I worked for was in Virginia. The house where I used to work for was in Washington, D.C.

Q Mr. Ward, how old were you when this accident occurred?

A Approximately 31-32 years old.

Q How old was your brother who was the rigging operator at the time?

A He was 33-34.

\* \* \*

213

BY MR. MAGEE:

Q My question, Mr. Ward, was do you know how much cable in feet you had out at the time this accident occurred when this other snatch line broke and sheered off the stake?

A The exact fee I wouldn't know, sir. Because this particular truck is used on different jobs, but normally this winch if I remember correctly, holds 300 feet.

Q But do you know how much of that you actually had out in the pulling operation?

A Not in feet, no, sir, I don't.

Q I show you, Mr. Ward, the question which was asked you on March 13, 1969 in this regard and ask you if it refreshes your recollection --page 43, middle of the page:



"In other words the loadline was approximately a 100 feet?

"Answer: I would say about 100 feet, yes, sir."

Does that refresh your recollection at all?

214, A Yes, sir, that does. Let me explain, sir.

When you talk about load line in feet, I am talking from the winch to the distance we were pulling the chiller, sir, not the cable on the winch.

Q Not the cable on the winch but from the chiller to the winch was a 100 feet?

A Yes, sir, approximately 75 to 100 feet.

MR. MAGEE: No further questions, Your Honor.

THE COURT: Any redirect?

#### CROSS EXAMINATION

BY MR. HEFFELFINGER:

Q Mr. Ward, would you mind stepping down to the board just a moment, sir?

(The witness approached the blackboard)

And I am handing you this marker and in response to any question I might ask you, mark where it is located and if I ask you in feet put feet on there if you will, sir.

Now, Mr. Ward, on this morning of December 15, 1964, you have indicated that on the left of this diagram there was a wall, is that correct, sir?

A Yes, sir.

Q Now, and that's all partitioned off what from what?

A I don't remember, sir.

Q How high up did that wire go?

A If I remember correctly it went to the 20 feet.

31 BY MR. HIGGS:

Q Mr. Higgs, what size cable would you ordinarily use to move 44 or 45 ton chiller?

A Well, the size is not too important as long as you get the right hook-up.

Q On examination by Mr. Higgs, you mentioned that the 5/8 cable has a safety factor of 9 tons or something to that effect?

A Yes, sir.

Q This chiller is 44 tons. Would you tell us why a 5/8 cable is used for 44 tons or how you rig it?

A Could I use the board?

Q Yes, use the board. (Goes to blackboard.)

32 A First of all I will talk about the winch here. Most heavy rigging trucks that I worked with in this area, particularly normal size of a winch line is probably 5/8, or at most 3/4 for the simple reason you get more cable on the winch, and also you don't depend on this one line.

Q Why is that?

A Simple reason is it will break if it pulls more than 9 tons. They usually rate them 40% safety factor. So anything I'd say around 12 tons more or less would break this line.

Q What do you do with a 44 ton --

A So to beging with, this chiller is on gum rollers. The more rollers you put under something or the other the machine is going to move. By this chiller being on rollers, special 6 inch rollers, you cut down your friction. In other words, you don't have dead weight sitting there, you eliminate that.

Also, with my experience, 44 tons if it is rigged right is not too hard to move. What you do, anyway, you take the winch line, you come through a gate block here. Every time you go through a gate block, if I'm correct, you double your pull. In other words you come down, go through this gate block, go over here, come through another gate block and every time you go around this you increase your pull approximately 9 tons. You come through this gate block and you "dead man" on this column here. So you have 1, 2, 3, 4 gate blocks which you have to transfer this pull over, so you have four times as much pull on these lines if you do that, plus you are 40% safety factor.

Q Thank you.

(Witness resumed the stand.)

How many chokers were on the job, Mr. Ward, and where were they kept?

A I can't tell exactly how many chokers were on the job but it was quite a few and they weren't kept any particular place. It was more or less scattered over.

Q Anyone could grab them, could they?

A Yes, sir, I don't see why not.

Q All the chokers were yours?

A If I remember correctly there was some chokers there other than what we had. I couldn't be positive.

Q Now, you testified that there were six riggers on the job. Why didn't the six riggers say on the job the next two days?

A Well, because of the union situation. Riggers wasn't allowed to move this equipment, it becomes steamfitter equipment. In other words, we wasn't allowed to handle the equipment.

Q You think riggers are better equipped to move the equipment than the steamfitters?

A Yes, sir, I'd say so.

\* \* \*

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BY MR. MAGHE:

Q You stated that a cable 5/8 of an inch will pull up to 9 tons?

A Approximately, sir, yes, sir.

Q If something happens in connection with the rigging and the rollers do not roll properly so you get a stoppage, then you get the full pulling weight, do you not, if this 44 ton chiller stops it is transmitted into your line?

MR. MAHONEY: I am going to object. The question is misleading. That loadline was not hooked up directly/<sup>to</sup>the chiller as indicated on the diagram. If Mr. Magee is putting a question to the witness concerning the pull he will have to say a load line connected to several connections here, pulled to the column, back again, up and back again --

THE COURT: Don't you think the witness is able to take care of himself? If it isn't correct on the diagram don't you think this witness is experienced to say no, it is not correct?

MR. MAHONEY: It is correct on the diagram but the question isn't complete.

THE COURT: Ask the question.

BY MR. MAGEE:

Q I will ask again. The chiller weighed 44 tons?

A Approximately, sir, yes, sir.

Q You say the weight is reduced and friction removed because the gum rollers are under it. You said that too, didn't you?

237 A Yes, sir.

Q Now, if something happens and this stops, these rollers stop rolling, and do not move, on the line and through the pulleys you get your 44 ton weight pull, do you not?

A Not particularly, sir. Not with that many rollers under it.

Q They are not moving, they stopped. You said the rollers stopped on one side and you had to start up again?

A I don't remember saying the rollers stopped, no, sir.

Q You were going to get a sledge hammer to correct it?

A I remember saying something about we was going to take a hammer to straighten the rollers or guide it, or straighten one up.

Q When you started after you went through this operation and the men went to get the sledge hammer this winch was started again as you testified, and then the cable snapped, the chiller didn't move did it when that cable snapped?

\* \* \*

MR. MACDE: The choker cable snapped.

A Yes, sir, the load line snapped -- I mean the choker snapped.

Q The answer is yes, sir?

A Yes, sir.

MR. MACDE: No further questions, Your Honor.

MR. MACONEY: May this witness be excused?

THE COURT: You may be excused.

\* \* \*

52 MR. HEFFELFINGER: Ladies and gentlemen of the jury, I am going to read to you just briefly a portion of this agreement which has been admitted into evidence.

(Defendant's Exhibit No. 6  
received into Evidence.)

This agreement made this 4th day of November, in the year 1964, by and between William H. Singleton Company, Inc., Box 152, Springfield, Virginia, hereinafter called subcontractor, and Magazine Bros Construction Corp., a corporation organized under the laws of the State of Maryland, hereinafter called the contractor. Witnesseth that the subcontractor and the contractor in consideration of the mutual covenants and considerations and agreements herein contained, covenant agrees each with the other as follows:

253      Article 1: Statement of Work.

(a) The subcontractor agrees to furnish all labor, materials, scaffolding, tools, equipment, services and other requisites required to complete in place and to the extent that the contractor is obliged to do the plumbing, sprinkler, heating, ventilation and air conditioning work for the subject project, excluding all work contracted for separately between the subcontractor and the Washington Gas Light Company, or more fully and hereinafter defined in Rider No. 1, 2 and 3 attached hereto and made a part of, for the construction of Watergate stage 1, New Hampshire and Virginia Avenues NW, Washington, D.C., for Watergate Improvements Inc., 1028 Connecticut Avenue, Washington, D.C., hereinafter called the owner ... in accordance with specifications and/or

Drawings including all addenda thereto prepared by ... hereinafter called the architects, all of which specifications drawings and addenda signed or initialed by respective parties, or identified by the architecture, form a part of a contract between the contractor and the owner, dated (blank), the whole being hereinafter referred to as contract document and hereby made a part of this document.

(b) Copies of said contract document shall be kept on file by the office of the contractor for reference by parties hereto.

54 (c) It is agreed that the subcontractor assumes for the work covered by this agreement to the full extent thereof all obligations and responsibilities placed upon the contractor by the aforesaid contract documents which the contractor assumed... subcontractor further agrees to be bound to the contractor by the architects interpretations of the drawings, specifications and addenda thereto."

\* \* \*

HENRY F. KRAUTWURST

was called as a witness, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HEFFELFINGER:



Q Mr. Krautwurst, keep your voice up so all of the jurors may hear you, all counsel, and the Court and the Reporter, and if you will speak into that microphone there it may help a little.

Now, will you please state your full name?

A Henry F. Krautwurst.

\* \* \*

255 Q By whom are you employed?

A Washington Gas Light Company.

Q How long have you been so employed?

A Thirty years.

Q What is your job or capacity with the Gas Company, sir?

A I am an attorney on the staff of house counsel.

\* \* \*

267 THE DEPUTY CLERK: Defendant Magazine Exhibit No. 9 received in evidence.

[Defendant Magazine Bros.' Exhibit  
No. 9 was received into evidence.]

MR. HEFFELFINGER: Now, may I read this certain portion of this?

THE COURT: Read any portion you think is material.

MR. HEFFELFINGER: Ladies and gentlemen, this is captioned, "Construction Agreement", and says:

This agreement made this 12th day of November,  
1964 by and between William H. Singleton Company,  
268 Incorporated, contractor, a Virginia corporation,

U. S. Leasing Corporation, a California Corporation, and Washington Gas Light Company, and U. S. Leasing Corporation, will be referred to in this agreement as USLC or owner, -- meaning of this equipment -- and Washington Gas Light Company, USLC or a corporation of the District of Columbia.

"Witnesseth:

"Whereas, Washington Gas Light Company has entered into an agreement with Watergate Improvements, Incorporated to furnish steam and chilled water services for heating and cooling the buildings comprising or to comprise the development known as Watergate project to be located in a triangular area of land west of Virginia intersection and New Hampshire Avenue, Northwest in the District of Columbia; and

"Whereas, Watergate Improvements, Incorporated has leased to the Washington Gas Light Company premises within the Watergate project in which equipment for providing such heating and cooling services will be installed; and

"Whereas, contractor -- meaning Singleton -- and I will read Singleton so there will be no confusion between Contractors and this construction agreement.

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"Whereas, Singleton for and on behalf of USLC will purchase and install such equipment on said leased premises under the terms and conditions of this agreement; and

"Whereas, such equipment so installed will be owned by USLC and leased to Washington Gas Light Company.

"Now, therefore, and in consideration of the mutual premises hereinafter set forth, the parties agree as follows:

"A. Scope of Work:

"(1) Singleton agrees to furnish, acquire, purchase, construct, and install for and on behalf of USLC all boilers, refrigeration machines, cooling towers, pumps, controls, wiring, pipes, support foundations, ladders, platforms and all other equipment and appertinences included in the matter provided by the contract special occasions drawings prepared by Day and Zimmerman, such contract specifications are set forth in a document entitled 'Contract Specifications for the Watergate Development Central Plant' attached hereto as Exhibit A and made a part hereof."

BY MR. HEFFELFINGER:

Q Now, do you also have and have you brought with you

under subpoena and have there the original of this exhibit A, which is incorporated and made a part of this construction agreement?

A Yes, I do.

Q And I will show you this and ask you if that is a photostatic copy of that exhibit A, sir?

A Yes, it is.

Q What does that exhibit A contain?

A This contains the contract specifications for the Watergate central plant.

THE COURT: Excuse me a minute. Has this been marked yet?

MR. HENPELFINGER: No, sir.

THE COURT: Suppose you have it marked.

THE DEPUTY CLERK: Defendant Magazine's Exhibit No. 10 marked for identification.

[Defendant Magazine Bros.' Exhibit

No. 10 was marked for identification.]

(Shown to Mr. Magee.)

MR. MAGEE: I have read it, Your Honor. We have no objection.

THE COURT: It will be received.

THE DEPUTY CLERK: Defendant Magazine Exhibit No. 10 received in evidence.

[Defendant Magazine Bros.' Exhibit

No. 10 was received into evidence.]

MR. HEFFELFINGER: Your Honor, if I may?

Ladies and gentlemen, the construction agreement further goes in paragraph 2:

"All materials and equipment ordered or used and all work performed by Singleton hereunder shall be subject to inspection and approval of WGLC."

Paragraph 5:

"Singleton shall handle the ordering of all equipment subject to paragraph 2 above -- which I just read -- and will prepare its own payroll and pay its own employees. Payrolls will cover personnel up to and including persons engaged in job site supervision as defined in paragraph 7 below, but will not include personnel engaged in activities of procurement."

Paragraph 7:

"Singleton shall establish and maintain at the job site an adequate organization staff to give proper job site supervision to the work, change orders, and to handle various other functions in accordance with good construction management practice."

If I may, Your Honor, I would like to read to the jury at this time certain provisions of exhibit A which is

72 defendant Magazine's No. 10?

"Under the standard general conditions, the Watergate development central plant general conditions, page 1, contract documents, section 1.0.

"Contract documents consist of construction agreement standard general conditions, special conditions, drawings and specifications. Contract documents are complementary of what is called for by anyone shall be as if called for by all unless otherwise provided for in the contract documents six copies of drawings and specifications for the execution of the work will be furnished to the contractor by owner's agent free of charge and it shall be returned on day of completion of the work as they remain on this property, additional copies may be obtained at contractor's expense.

"Section 3.0: Work.

"Work by contractor -- and bear in mind in reading this Singleton is the contractor. Work by contractor unless otherwise noted includes labor or material or both, equipment transportation, services, other facilities necessary to complete the contract in a safe and acceptable manner. Contractor shall do no work without proper drawings and/or instructions, no changes in drawings or

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specifications without written approval from the owner's agent."

Page 2 of general conditions:

"Material and Workmanship. Section 5.0.

"All work under this contract shall be of good quality and materials, machinery and equipment and workmanship, and shall conform in every respect with specifications and drawings. If contractor does not remove submitted work within a reasonable time except by written notice, then owner's agent may remove and store material at expense of contractor. If contractor does not pay the expense of said removal within ten days thereafter, owner may, upon 10 days' written notice, sell materials. Neither the final certificate of payment nor provision of the contract shall relieve contractor of responsibility for faulty material or workmanship unless otherwise specified. Contractor shall render any defects thereto and pay for any damages which will appear from period of one year from period of completion. Owner shall give notice to observe defects with reasonable promptness on discovery."

On general conditions, page 3, Section 6.0:

"Contractor's Responsibility."

I will read the last, second to last paragraph of

that section:

"Contractor shall verify all measurements and be responsible for same. shall report to owner's agent any errors, omissions, or inconsistencies in the specifications or drawings and shall await instructions before proceeding with the work. Contractor shall be held to have examined the premises and the limitations under which the work will have to be executed as well as any underground conditions. Should the drawings disagree in themselves with the specifications, the better quality or greater workmanship and material shall be furnished."

Now, in Section 8.0 of the general conditions, page 3, under "Fair Labor Act":

"Permits, Regulations and Taxes.

"Contractor, -- meaning Singleton -- agrees in its operation under this contract to comply with all applicable requirements of the Federal Fair Labor Standards Act as amended and all regulations and orders of the United States Department of Labor as well as all state and local statutes and ordinances applicable to the labor."

Continuing on page 4 of the general conditions, still under Fair Labor Act and Regulations, 8.0:

"Contractor shall give all notices and comply



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with all laws, ordinances, rules and regulations. Contractor shall call owner's agent's attention to any variance between specifications and applicable regulations. If contractor performs any work knowing to be contrary to laws, ordinances, rules and regulations and without such notice and authorization shall bear all costs thereto."

Page 4, general conditions section, supervision section, 10.0:

"Contractor -- meaning Singleton -- shall keep on the job during his progress a competent superintendent and any necessary assistants. Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him. Contractor shall conduct its operations in a manner compatible with owner's safety regulations and employee practices pertaining to the locality of the work."

Then on page 4 of the general conditions, Section 11.0, "Protection of Work and Property:"

"Contractor shall continuously maintain adequate protection of all its work from damage and shall protect owner's property. Contractor shall take all necessary precautions for the safety of personnel

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as required by laws, codes and applicable regulations. This shall include without limitation the direction of necessary safe guards and posting of warning signs against hazards."

In the same section of general conditions, page 5, the last paragraph:

"American Standards Association Code (a)10.2:

"American safety codes for building construction' as well as all local codes shall be followed during the construction period."

Now, the special conditions, Watergate Development central plant, page 1 thereof:

"General, Section 1.0:

"Special conditions are for use with this agreement and standard general conditions and as such constitute one of the contract documents that apply to the work to be performed at owner's plant.

"Section 5.0.

"Examination of Site of Work:

"Contractor -- and this refers to Singleton all the way through where contractor is used -- shall familiarize himself with the site and all local conditions and all facts and circumstances that may impede, facilitate, or otherwise effect the performance of the work and shall be pursued or made

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allowances for such conditions in the preparation of his proposal.

"6.0: Water Supply:

"Contractor will provide water source within the construction area, furnish all tie-in connections to this source.

"7.0:

"Contractor shall provide temporary offices and change houses for its own use.

"Section 8.0:

"Contractor may provide telephones on the site where and as required.

"Section 9.0: Temporary Power and Light:

"Contractor -- meaning Singleton -- shall provide all electrical power and light required for construction purposes and shall make all necessary tie-in connections to the power system.

"Section 10.0:

"Contractor shall furnish all compressed air required for construction.

"Section 11.0:

"Contractor shall install and properly maintain all necessary temporary toilets.

"Section 13.0:

"Movement of materials at the job site will be

under the direction of the contractor -- meaning Singleton.

"Work Procedure, 21.0, -- page 4 of the special conditions:

"In connection with the excavation for under-ground piping, electrical grounding, substructure, and so forth, if any, all ditching and excavation shall be performed in neat and workmanlike manner, safety bermsides erected if necessary, and excavation may be done by machines and original soil compacted by machine."

\* \* \*

#### CROSS-EXAMINATION

BY MR. MITCHE:

Q On direct examination you referred, sir, to Defendant's Exhibit 7 which is the lease of July 29, 1964.

Now, you pointed out the rent under this lease was to begin not until the first month following a six full months after completion of all five buildings or four years and four months after completion of the building referred to as building No. 2, whichever shall first occur.

Now, in February of 1964, this particular building was under construction, is this correct?

A To my recollection.

Q And in December of 1964 it was still under construction, is that correct?

A Yes.

Q Now, I ask you, can you tell us when the leasee, the Gas Light Company, actually went in and started to pay rent on this place?

A We didn't pay our first payment of rent until latter part of 1968, is my recollection.

Q Give us the date when you actually went in to take over and operate your plant and furnish power under this lease?

A We accepted possession at 8:00 a.m., December 22, 1965 of the facility --

THE COURT: December what?

THE WITNESS: 8:00 a.m., December 22, 1965.

BY MR. MAGEE:

Q And in the interim you had entered into Defendant's Exhibit No. 9 which is the construction contract between Singleton, U. S. Leasing and the Gas Company?

A That is correct.

279 Q Which is November 1964?

A That is correct.

Q This contract, did it not cover work other than Singleton Company to do as fitters?

In other words, you had other trades involved other than pipefitters?

A Washington Gas had no trades but Singleton. What trades Singleton had involved, I don't know.

Q Put this contract did contemplate in paragraph 6, page 3 that this was a subcontracting rather than other contractors and you required bids on all services and materials of subs?

A What was that reference again?

Q Page 3, paragraph 6 of the construction contract of November 12, 1964.

A I have the paragraph, if you repeat the question.

Q For example, it provides, does it not, the procuring of roughing materials, i.e., pipes, fittings, valves, hangers, inserts, and other similar items, shall be made by contractor on basis of scheduled prices and discounts obtained through bidders and suppliers.

A I assume that is what Singleton did.

Q You have another one: Contractor shall obtain minimum of three bids on each subcontract.

A Yes.

Q So some subcontracting was contemplated where the work fell into the jurisdiction of different trades, let's say?

A I am sure that is correct.

Q And you are aware that the general contractor who was building the entire building was defendant No. 2 in this case, Magazine Bros. Construction Company?

A That is my understanding; yes, sir.

Q The building had to be built and reach a construction stage under the Magazine Bros. before you could bring and put your equipment in, is this correct?

A To my recollection.

Q So your work had to be coordinated with the construction of the building before you put in the heavy chillers?

A We worked with Singleton.

Q Yes, sir, the general contractor, to have the building in shape to insert your equipment.

A That is correct.

\* \* \*

MR. MAHONEY: May it please the Court.

I would like to offer into evidence the same regulations which were previously offered by the plaintiffs' attorney in the case against Contractors in defense of the action these regulations I assert apply against William Singleton Company.

I will read the same numbers, but those numbers are already in the record. Also, in this case, I adopt the contents which were just referred to between the Washington Gas Light Company and Singleton and the contract specifications with respect to the agreement for services and temporary lighting. I believe they comprise Exhibits 6 through 10 of defendant Magazine's case.

And with that, defendant Contractors rests.

THE COURT: I take it now that the Magazine Company has rested, too, is that correct?

MR. HEFFELFINGER: Yes, Your Honor.

THE COURT: All the evidence been offered on behalf of the defendants?

I understand Mr. Magee has some rebuttal testimony. You want to offer that now?

MR. MAGEE: Yes, Your Honor, I would like to offer in evidence at this time defendant's Exhibit No. 1, 2, and No. 3, because they have been used extensively, Your Honor,



before the jury and haven't been offered; and I offer that as part of our case in rebuttal.

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THE COURT: Do you have a rebuttal witness?

MR. MAGEE: We call Mr. Wiseman.

Thereupon,

JOHN ROBERT WISEMAN,  
called as a rebuttal witness, and having been previously duly sworn, was examined and further testified as follows:

DIRECT EXAMINATION

BY MR. MAGEE:

Q Mr. Wiseman, you have testified before in this case and you have been sworn and you are still under oath, sir.

Mr. Wiseman, just to be specific, I show you a drawing which you prepared and which has been received in evidence as Plaintiffs' Exhibit No. 12.

Now, I ask you the specific question: Was this exhibit a correct reflection of the rigging as you observed it on December 15, 1964 after you arrived at the scene at approximately 8:30 a.m.?

A This was, with the exception of where Mr. Ward showed me how he put the gate block on which I testified to before.

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Q Now, in addition, this shows a gate block attached to a column, correct?

A Yes, sir.

Q Were there any other gate blocks attached to that

line which ran off to any other column in this area at the time you examined the rigging that morning?

A No, sir; that's exactly the way I found it with the exception of the gate block at the top.

Q You are referring to gate block here which was not hooked up at the time you arrived?

A No, sir.

Q Now, was there any additional gate block attached to the chiller itself and running over to any other column over a pulley arrangement?

A No other cables other than the sling which the hook off the main load line goes to attached to this at all.

Q Now, you have already testified to and your report shows there was a one-half inch cable from the winch line, is this correct?

A The main load line you are talking about? That was a half-inch line; yes, sir.

Q You measured this?

A I measured this with a rule.

Q In other words, this winch line, correct, pointing to the long line on the board, is called the load line as well, correct?

A Yes, sir.

Q This was one-half inch and not five-eighths?

A One-half inch, measured by ruler.

Q You also saw the broken choker, did you not, sir?

A Yes, sir.

Q I ask you, what was the length of that choker?

A There was no way of telling the complete length of the choker, it had been cut in to.

Q You say cut or frayed? I want this very clear.

A The choker was cut.

Q Cut. Now, Mr. Wiseman, would you turn, please, to your regulations which show loads on lines being used in this type of an operation.

A Yes, sir.

Q Now, here is a load line the way you saw it coming off a winch truck through a gate block to a chiller -- half-inch line, you testified to.

What is the maximum pulling strength of that line by pounds?

A By pounds? Depending on the number of strands to make up the strength of that cable, the maximum on half-inch would have been 25 hundred pounds.

Q Now, assume that you were mistaken, just for the purpose of the question, and this was a five-eighths inch line, what would be the maximum pulling strength of a five-eighth inch  
287 cable?

A 3,840 pounds maximum.

Q Now, does the addition of this gate block which I am

pointing to in the lower left hand corner of your drawing add or deduct to the strength or pulling strength of the load line?

A No, sir.

Q In other words, this does not take any weight or pull off the load line in this manner?

A No, sir.

Q Would you call that a direct pull?

A Yes, sir.

Q What would be the maximum load that this line would pull rigged in this fashion?

A Using your safety factor, maximum load should be pulled with half-inch line would have been 25 hundred pounds.

Now, there was one lay out, which would reduce this considerably.

Q Now the chiller weighed 44 tons or 95 thousand feet --

THE COURT: Wait a minute. What did you say, feet?

MR. MAGEE: Sorry. Pounds, Your Honor, or approximately 44 tons.

BY MR. MAGEE:

Q Is that correct?

A Yes, sir.

Q You testified the chiller was on logs, round logs?

A Yes, sir.

Q Assuming these logs, for the purpose of the question, blocked and would not move, what would happen to this type of

rig if the winch continues to run?

A This was a dead weight, as you have stated, and this amount of weight tried to be pulled with this line, it would have snapped.

Q Where did it actually snap?

A The line itself, the load line did not snap. The choker that holds the gate block is what cut in to.

Q What is the reason for this on this type of rig?

A The reason it cut because it was put over a sharp edge of the bumper bar on the truck.

Q Now, assuming, for the purpose of a question, that there has been testimony that the rigging was as shown on Plaintiffs' Exhibit 53 which has also been enlarged on a drawing, Your Honor, which is a drawing signed by Lee Ward, dated March 13, 1969. You see this, sir?

A Nothing that looked like this at all.

Q Assuming, however, this rig was in place. You see there is a gate block coming off of a pulley going down to the chiller, is this correct?

A Yes, sir.

Q And there is another gate block coming off the chiller which goes up through the choker and into the winch, correct?

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A Yes, sir.

Q Assume this was rigged with a five-eighth inch line,

I ask you, what would be the manner load would be applicable to that type of a rig?

A With the double pulley, the way it is shown on here, your load line would be reduced in capacity; therefore, you wouldn't have half the amount of load on that line.

Q When you refer to the scale, for the record, you are referring to Plaintiffs' Exhibit 3?

A You want to know the total --

Q Just a moment. You gave measurements from Plaintiffs' 3, page 84?

A 84, yes, sir. Page 84, if they had gone to five-eighth, like you asked me, and they had used the heaviest type of cable, it would have been 3,840 pounds.

You could reduce it by 50 percent on a main load line.

Q What would be the maximum pulling strength on the load line if there was a rigging of five-eighth inches of cable on the load line as reflected, may it please the Court, in Mr. Ward's drawing, Plaintiffs' Exhibit 53?

A 1,920 pounds.

Q Now, assuming that the gum logs stopped and this chiller came to rest, what would happen to this type of rig?

A This would have also broken.

Q Now, Mr. Wiseman, you are aware, are you not, sir, of who was the general contractor who was building the entire

building as such?

A Yes, sir.

Q Who was that?

A That was Magazine Bros.

Q Now, under your procedures, during the construction stage, who was responsible for furnishing construction lighting?

MR. HEFFELFINGER: Objection, Your Honor.

THE COURT: I think that is a question for the jury to decide. We heard a lot of evidence in this case. That is one of the things the jury must decide in this case.

Objection sustained.

BY MR. MAGEE:

Q Now I ask you one question: In the area marked "X-4" on your drawing, Mr. Wiseman, which we have been referring to, and is still on the board, would you tell us what the condition of the lighting was against this wall as compared to where the rig was?

MR. HEFFELFINGER: I object, Your Honor. This is not proper rebuttal.

THE COURT: Has he covered this matter before?

MR. MAGEE: I didn't get specifically in this matter before.

\* \* \*

BY MR. MAHONEY:

Q Mr. Wiseman, the first question asked you just now,

was this the rigging as you described it when you arrived and you answered yes. Is that right?

A Yes, sir; with the gate block on the truck.

Q Gate block on the truck?

A Yes, sir.

Q Everything else was in line, everything else was  
95 rigged with the exception of this gate block, is that right?

A Yes, sir.

Q You told me before, last week, when you arrived -- correct me if I am wrong -- when you arrived this lead line was down to the left of this truck?

A Down beside the truck; yes, sir.

Q Wasn't rerigged in your presence?

A No, sir. Mr. Ward showed me how he had the choker placed on the truck.

Q My question is: When you arrived, according to the answer you gave to counsel for the plaintiff, this job was entirely rerigged except for the gate block, right?

A No way for the cable I know of to stay up on the truck once the cable is heavy enough for it to pull off the truck without the block to hold it.

Q You say also no lines coming off the gate block attached to another column?

A No, sir.



Q You testified, Mr. Wiseman, a half-inch cable or five-eighth inch cable would pull 25 hundred pounds as a maximum load. Do you know?

A I would have to look at the chart. A half inch, the maximum on the chart for a half inch is 25 hundred pounds.

THE COURT: That is dead weight, is it not?

THE WITNESS: Yes, sir.

BY MR. MAHONEY:

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Q Did I understand you to say that if you use gate blocks and you pull your cables and use several gate blocks, your load is not distributed? Did I understand you to say that?

A Distributed?

Q I will show you.

(Mr. Mahoney places another chart on the board.)

Q Can you see this diagram?

A Yes, sir.

Q Is it your testimony that there were no lines went off and attached to this column over here (indicating on the drawing)?

A There was a line that went off -- not a line, there was a gate block with a choker that I showed on mine, but it was closer to the chiller than what he has diagramed there.

Q You are saying this diagram is incorrect as far as this is concerned, are you not?

A May I look at it closer?

(The witness left the witness stand and approached the board.)

A No, sir; nothing like that.

Q Nothing like that?

A No, sir.

(The witness resumed the witness stand. The above is Plaintiff's Exhibit No. 55.)

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BY MR. AMOS:

Q This lead line, Mr. Wiseman, was certified was five-eighths, you found it one-half?

A Yes, sir.

Q This was attached to a 44-ton chiller.

Now, it is your testimony, as I understand, this is not the proper size cable you would use to move a 44-ton chiller, is that right?

A According to my testimony? That would have to be done engineering-wise and would have to figure the size of cable to use to move it.

Q You just told me a half inch is used to move 25 hundred pounds?

A On dead weight, is safe load factor.

Q What is five-eighths on safe load factor?

A Maximum on a five-eighth would be 3,840 pounds.

Q Are you saying now that one-half inch or five-eighth inch cable should only be allowed to move 25 hundred and 38

hundred pounds respectively, is that your testimony?

A What I said, if this was a dead load, this was the maximum that should be used to pull this. This was the safe working stress of the cable.

Q What size cable should be used to pull 44 tons according to your testimony?

A You have to figure it up.

\* \* \*

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BY MR. MAHONEY:

Q Mr. Wiseman, did you make those calculations during the recess?

A Of course, according to our chart, it doesn't go that high, so I am using the figure of half inch and working with 25 hundred which is the maximum on this against 88 thousand pounds; and from the best of my calculations, I come up with one and three-quarter inch cable.

Q How did you arrive at that figure?

300 A How did I arrive at it? I took the weight, multiplied the tons, 44 tons, by two to give me the total weight, two thousand pounds to a ton. That gave me 88 thousand pounds. I then divided the 25 hundred into the 88 thousand pounds, which gave me an answer of 35 and a fifth, or 3.5 and I went back to a half inch cable and changed the decimal -- decimal 05 and multiplied the two and came up with my answer.

Q You said just before the luncheon recess, and that

is what I am concerned with, half inch cable would move 25 hundred pounds?

A That is with a safety factor of 7.5.

Q And a five-eighths inch cable would move 32 hundred pounds?

A 32 hundred and 40 pounds according to the chart.

Q An inch and a quarter can move 95 thousand pounds -- inch and three-quarter cable moves 95 thousand pounds?

A I said according to my calculations now, I am not an engineer. I am trying to do the best I can for you figuring against the 83 thousand pounds. We were talking about 44 tons.

\* \* \*

BY MR. HENLEY:

Q Would it be correct, then, Mr. Wiseman, that the one-half inch lead line that you said was on here could not then pull 44 tons or it would break?

A I said that this has the built-in safety factor of 7.5. If you want to go to the ultimate breaking strength, you would multiply this by 7.5.

Q Comes out to what?

(The witness figures on paper.)

A The ultimate breaking strength on that would be 18,750 pounds according to my chart.

Q Half inch cable?

A Yes, sir.

Q. All right. Then may I conclude then a half inch cable pulling this 44-ton chiller would break?

It is considerably more than 18 thousand pounds.

302

A On a dead weight, you could construe that, yes.

Q Is there any way to get a half-inch cable by rigging to a point where you can pull 44 tons?

A I would imagine that there could be, as engineering got into it and figured all your weights for you. I can't put the correct amount of pulleys and know the resistance and so forth of the pulleys to give you it.

Q Isn't it a fact, based on your experience, that every time you take a load line and run it through a pulley, you run it up and run it through another pulley and run through another, each line doubles the pulling capacity?

A Only the first time. In other words, if your ultimate pulling strength the first time is a thousand, you put your second pulley in to give it extra amount of weight, then you would have a two thousand pound line. After first doubling it reduces.

Q Let's look at your chart in your book on page 84.

Isn't it a fact, Mr. Wiseman, that the largest size cable which has any reference to construction in this book is one inch?

A Yes, sir.

Q And under your cable on page 84 it says, talking

about single lines, when used in multiple the loads may be increased proportionately.

Q Does that mean that if you double the line you increase the load five or six times?

A Theoretically, --

Q Is that right?

A The first time, like I explained to you.

Q Just the first time?

A Just the first time; yes, sir.

Q No matter how many pulleys you use here whether you went one, two, three, four, five lines, you only increase your load in the first one?

A You increase the load on each pull. The first one you double it. Each one thereafter you reduce it. I have a book on rigging, if you would care to look, if it would help.

Q From what you tell me, the way this is rigged up, this chiller could not be moved under your calculations?

A Under my calculations, with a dead pull.

Q Could you explain, then, Mr. Wiseman, how using the same rigging set up two chillers were moved into place on the other two days with the same load line?

A My understanding is these were put into place on rollers. When you have rollers or wheels underneath something, this will reduce the force.

We are talking about a dead weight. This is what you asked me to figure.

Q Then am I correct in saying to use the proper number of rollers in this half inch line can move the chillers?

304 A Engineering-wise, I can't tell you. I don't know the amount of resistance on it.

Q As I understand your testimony, Mr. Wiseman, when you came here they had the wrong load line, wrong hookups, didn't have padding, didn't have anything, the cable was frayed.

Why didn't you condemn this operation? Why didn't you say this is the way to do it? Why didn't you suggest they use a heavier load line, go back and rerig the entire operation and do it right?

A Why didn't I indicate that?

Q Why didn't you put it in your report?

THE COURT: You asked two or three questions. You asked him why he didn't condemn it first and then why -- break it down.

MR. MAHONEY: Sorry.

BY MR. MAHONEY:

Q Why didn't you condemn that cable?

The second question is: Why didn't you indicate in your report this entire rigging operation --

THE COURT: Suppose you answer one at a time.

THE WITNESS: At the time of the investigation, we

were mainly concerned with what caused the gate block to come loose and the cable to snap and hit the injured man.

BY MR. MALINOWSKI:

Q Well, look at No. 10 on your recommendations.

05 What were your recommendations to this outfit?

A I said, "Use experienced men on rigging and padding where necessary".

Q Is there anything in there to suggest to take this cable block and use one and three-quarter inch cable?

A No, sir.

\* \* \*

11 MR. GREGG: Your Honor, before all the evidence is closed and in line with what I gather Your Honor's instructions with respect to precluding testimony to the jury about workmen's compensation, I would like to proffer at this time testimony by Reliance Insurance Company that as of February 1, 12 1970, Reliance Insurance Company, as the workmen's compensation carrier for the Singleton Company, has paid to the plaintiff the sum of \$18,838.19 in compensation benefits and has paid medical expenses on his behalf in the amount of \$3,799.10.

THE COURT: All right.

\* \* \*



319           THE COURT: Let me ask you this: The jury could find, could they not, that this accident was caused solely by the negligence of the remaining defendant, Transport, or they could find, I suppose, it was caused jointly by the negligence of Transport and Singleton jointly? Even though Singleton is not a party in the case, it is a party in this respect, there is a crossclaim against Singleton which has to be decided by the Court at the proper time.

\* \* \*

335           THE COURT: I thought we had agreed, that is, you two had agreed, that the only issue is whether or not the remaining defendant, that is, Transport -- Contractors Transport, was guilty of negligence, if so, that negligence was the proximate cause of the accident and injuries allegedly sustained.

MR. MAGNE: Yes, sir; that is the way I understand the posture of the case.

MR. MAHONEY: It was resolved, but that is not my understanding the way it started out.

MR. MAGNE: So this would be improper under that ruling. Your Honor, number one. So I object to it.

THE COURT: Well, if after the case is all over and if there is a plaintiffs' verdict and the crossclaim against Singleton which is filed by the remaining defendant is sustained, in other words, if the Court finds that Singleton was also negligent, then I have to make a determination as to whether to reduce your verdict by X-dollars or not. That is the way the case stands at this time.

MR. MAGNE: Yes, sir.

THE COURT: Then I can't give this instruction.

MR. MAHONEY: May I be heard on that?

THE COURT: Yes.

MR. MAHONEY: It is the contention of the defendant, and has been the contention all along, that this rigging was done under the control of Singleton. This is a defense to the plaintiffs' case. It serves a dual purpose. It is not only for the crossclaim which is to be considered later by Your Honor, but it is also as a defense to the claim to the plaintiff. What we are saying is, and we have testimony to support this, is that the Singleton people put that choker on. If



you find they did it negligently, you can't hold Contractors for what Singleton did.

THE COURT: In other words, their negligence was the sole cause of the accident and injuries and damages sustained. What you are going to argue in closing, as I understand it, is that your company was not negligent, runner one. If anybody was negligent, it was the Singleton Company.

MR. MAHONEY: That is correct.

337 THE COURT: By reason of the evidence, you will point out to the jury. Now, if that is the posture of the case and this makes sense to me, why shouldn't I give this instruction, Mr. Magee? Suppose the jury finds it was Singleton's fault and not Contractors Transport Company's fault?

MR. MAGEE: Your Honor, then I would object to it on this ground: That this only Singleton out, just rigging the cables. That isn't what caused this accident. This accident was caused by the operation of the winch and after they changed the rigging which they admittedly did the day of the accident.

THE COURT: Why don't you draft this, if any act or acts of negligence on behalf of Singleton caused this accident, I should think Mr. Mahoney could redraft this and limit it to any act of negligence instead of limiting to the cables, the sling, the chokers, and so forth.

MR. MAGEE: With the proviso and they find no negligence

on the part of Contractors, then they can bring in a verdict for him.

THE COURT: That is what it amounts to, doesn't it?

MR. MAGEE: Yes.

MR. MAHONEY: The sole aspect would have to be considered.

\* \* \*

346 By direction of the Court, I will ask the Clerk to  
have you stand and return a verdict in favor of the defendant,  
347 Magazine Bros. Construction Company.

THE DEPUTY CLERK: Members of the jury panel, please rise.

Members of the jury panel, by direction of the Court, your verdict in this case is for Magazine Bros., so say you each and all?

THE JURY: (In a chorus.) Yes.

\* \* \*

363 These are the contentions: Plaintiffs contend that the accident and resulting injuries were caused by the following negligence in violation of statutes and regulations by defendant Contractors Transport. I will now enumerate them.

First, violation of the D. C. Code, Title 36, Section 483, which in substance requires employers to provide their employees with a safe place of employment.

Violation of various sections of the D. C. safety standards, rules and regulations, instructions which set out

the safety requirements for employers in the construction industry.

And failure to provide adequate supervision, in that they failed to keep the proper class of individuals and failure to supervise and correct proper rigging and pulling and cable systems and moving and installing chokers in that cables were frayed and pulled installed backwards and reversed.

In rigging the system and moving and installing the chokers in a defective and unsafe manner, in that they used wooden staves rather than steel staves and used chokers, gate blocks and clamps in the wrong places, and failure to use proper bagging, insulation and buffers, in that they used none, and failure to use properly trained employees, in that Contractors' foreman was not competent to carry on the work, and failure to give adequate and fair warning of any of the above to persons working in the area, including the plaintiff.

As I said, these are allegations by the plaintiffs regarding the so-called acts of negligence.

The plaintiffs also contend that all of the above acts or omissions on the part of the defendant constitute a failure to provide Mr. Dawson with a safe place to work.

\* \* \*

Transport asserts that the damages claimed by the plaintiffs were caused by the sole or contributory negligence of Mr. Dawson, in that he, Mr. Dawson, failed to keep a proper lookout for his own safety, failed to heed the warning to keep

away from the area of the crane, and that as a workman familiar with a rigging operation he failed to take appropriate action after hearing the scream of the cable in that he did not attempt to get away from the area. That is one of the defenses.

The defendant Contractors also claim that employees of Singleton were in charge of the installation of the chiller and the rigging and, therefore, if anyone is liable for the negligent rigging, it should be Singleton.

These briefly are the contentions.

\* \* \*

389

After you have arrived at a unanimous verdict in this case as to either one or both of the plaintiffs against the defendant, let me read the form of verdict first because I think it explains itself.

The title of the case on the first page, you are not concerned too much with that. It says: "Form of Verdict."

You really have two cases before you.

The case of Russell L. Dawson vs. Contractors Transport Corporation, that is the first case.

\* \* \*

390

However, if after you consider all of the evidence and all the instructions I have given you, applied the instructions to the facts in the case, you feel the defendant is entitled to your verdict and that the plaintiff, Mr. Dawson, is not entitled to recover, then it will be only necessary for the foreman or forelady to insert the words, in pen or pencil,

on the line provided in the case, "For defendant". That will  
 end the case. It is for you to decide with the defendant. You  
 can't find for the defendant or for the plaintiff. It must  
 be one or the other verdict.

If you find for the defendant in the case of Kenneth  
 Dawson against the defendant, then you will not consider the  
 case of Mrs. Dawson against the defendant, because, as I said,  
 her case depends upon whether or not her husband can recover.  
 In that case, your verdict in her case, then is, Wade Dawson  
 vs. Contractors, which is the second case you consider, will  
 be for the defendant.

However, if your unanimous verdict is for plaintiff  
 and you indicate any amount there, then, of course, you consider  
 whether or not under the evidence and law his wife is entitled  
 to a verdict. You don't have to give her a verdict, but you  
 may, if you wish to do so under the evidence and the law. You  
 do the same thing with respect to her case.

If the unanimous verdict of the jury is also in  
 favor of the plaintiff's wife, the foreman or forelady will  
 insert the words, "For plaintiff", under her case and then any  
 amount that you might find for her. Any amount, if you find  
 any amount, that will be entirely up to you.

\* \* \*

(AT THE BENCH:).

THE COURT: First of all, I will ask counsel for the  
 defendants if he has any objections to any part of the Court's



Instructions other than those made and are a part of the record?

MR. MAHONEY: If Your Honor please, I would like to renew my objection to the res ipsa loquitur instruction and to the plaintiffs' instructions which we have gone over before. I would renew my objection to the denial of the proposed instructions for the defendant or their substance and object to the Court's withdrawal of Singleton's case, the negligence aspect of Singleton. And there was no instruction in substance to reduce any amount of future loss to present worth which was set forth in defendant's instruction No. 5.

THE COURT: We have been all over the instructions.

Do you have any request for further instructions other than those you might have submitted and are a matter of record?

MR. MAHONEY: No, Your Honor.

THE COURT: With the exception of what you said, are you satisfied with the instructions as a whole?

MR. MAHONEY: Yes, sir.

THE COURT: I will ask you the same question?

MR. MAGEE: Your Honor, I renew mine as instructing the jury on contributory negligence. It is barred among other things, where a safety regulation or safety statute are violated just as an assumption of risk clause is by large of defendant and object to the charge on that ground.

THE COURT: Outside of that, any further instructions?

MR. WATSON: No.

THE COURT: You have nothing else to offer than your objection?

MR. WATSON: Yes, Your Honor.

### VERDICT

(Verdict for plaintiff, Marshall B. Dawson, in the amount of \$100 thousand.)

Verdict for plaintiff, Wade Dawson, in the amount of \$10 thousand.

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2

P R O C E E D I N G S

## DIRECT EXAMINATION

BY MR. MACKE:

Q Mr. Coakley, would you give us your name?

A William L. Coakley.

Q Where do you live?

A In Maryland.

Q Would you please give a brief summary of your training and experience?

A Well, I am a trained steamfitter by trade sir, and I have been in the business for thirty years for William Singleton.

5

\* \* \*  
Q Now, in connection with the installation of these, how many chillers were being installed?

A Three.

Q Did Singleton Company enter into any arrangement as to installing the chillers?

A Arrangements had been made to rig and handle and place the chillers on the pad.

Q In that connection, I show you what has been received in evidence as Exhibit Number One the caption is William Singleton and I ask you if you recognize that?

A There is two contracts that cover, this is a purchase order.

Q Who delivered the chills at

A Contractors Transport, Inc.

Q How were they put in?

A They were lifted off the flat bed they were with a crane and lowered into the basement.

Q Who performed that?

A Contractors Transport.

Q In connection with that operation, did any of your help do anything?

A What do you mean.

Q Who moved them around on the basement floor to the place where they were installed?

A Well, Transport had a flat-board truck, if you understand, and a dolly, so forth to place them and to lower them into the building to their final resting place.

Q Who handled this equipment?

A Contractors Transport handled the truck wench connecting the web rigging and pulling the cable and my men jacked the chillers up to put the dolly in 10, 20, 30 feet whatever may have been necessary and jacked it again onto the dolly and placed it at another angle.

Q As far as the rigging was concerned who had the truck and the car wench?

A Contractors Transport.

Q Who owned the cable materials and rigging it up to the truck?

A Contractors Transport. Let me make this clear, we did not at the time have any equipment on the job, dolly trucks or any equipment whatsoever.

7 Q This was their work in connection with the installation of this work?

A That's right.

Q How many chillers had been delivered to the site prior to December 16, 1964?

A I don't recall.

Q How many chillers were there?

A Three chillers were involved.

Q Had all three chillers been delivered to the site on December 16, 1964?

A I don't recall.

Q On December 15, had there been activity involving one of the chillers?

A There could have been.

Q On December 16, 1964, in what capacity was Singleton Company there?

A In the same capacity for moving the dolly under the chillers.

Q Who was the foreman for Singleton Company?

A I was there.

Q And you have been there from the time the rigging had started that morning?

8

A Right, sir.

Q Now, during the rigging -- first of all, was this rigging up and attached when you arrived at work on February 16, 1964?

A No, you had to attach it after I arrived.

Q Yes, sir?

A No, sir.

Q Possible that it came to this truck when this work was done on a day or day?

A As I recall, the truck was used for transportation. A man would come down the dirt road in the morning and set everything on for that morning and then in the afternoon, he would go home.

Q Did they come that morning, on the morning of December 16, 1964, with equipment on the truck?

A I assume so, sir.

Q On the morning of December 16, 1964, did Singleton Company actually help with the rigging of this rig?

A No, sir.

Q Did you inspect the equipment in any way, prior to its being used as you have stated?

A No, I didn't think it was my job to inspect it.

Q Did Contractors Transport Company have a foreman for the contract on the job that morning?

A I assume the foreman they had would have been one of the men on the job.

Q How many men were there?

A Two.

Q Did these two men install the rigging?

A Yes, sir.

9

Q Do you remember how many men Singleton had on the job that morning?

A As I recall, four men and myself.

Q What other workmen in the area besides your men that morning?

A Maybe two more.

Q Were they Magazine Brothers workmen?

A I couldn't tell you positively whether it was Magazine's in question.

Q Now, did there come a time on December 16, when an accident occurred did there not Mr. Coakley?

A That's right.

Q Who was injured on that day?

A Mr. Dawson.

Q Would you please tell the Court and the jury, Mr. Coakley, what had been done as you recollect prior to this accident occurring?

A As I recollect, there was two of them being put in place, one being put in the final place. I, myself, was on one side of the chiller remaining, there was no difficult job to do, it would only move it an inch at a time to the far

side of the chiller and you would have the dolly from under  
 the chiller and see the chiller on the floor. Two chillers  
 and on the floor and one in the pit and someone said a fellow  
 10 got him over there, is it possible I got over there and went  
 over to see and in the Mr. Lee's.

11

Q Did you notice whether this truck had any standards or  
 stakes on it?

A I did, sir.

Q And what type of standards were on the truck?

A Two by fours, sir.

Q Were they wooden?

A Yes, sir.

Q And did anything happen to one of these stakes during  
 the accident?

A To my knowledge, when the cable broke, it hit the  
 standard and the standard snapped and it was hit across the room.

Q Is that what injured Mr. Dawson?

A I presume it did, sir.

Q Mr. Coakley, did you see any broken cables in the area  
 after the accident?

A I did not, sir.

Q Did you have a discussion with Mr. Lee Ward there on  
 behalf of Contractors, Inc. at the time after?

A Not at the time of the accident.



12

Q You did not see the cable break if the cable broke?

A I did not, sir.

Q When you came back, where was the cable lying that had been attached to the choker before?

A I couldn't see, I never did see the cable.

Q By that, you were referring to the choker.

A Yes.

Q And the main cable, where was that?

A The stake was on the ground.

Q Between this gate, block and wench?

A Right, sir.

Q Would you describe the function of a wench on the truck?

A It turns through a series of gears ration. Some wench drums have all the weight on a wench of that size.

Q What size?

A Ten tons.

Q And when the wench turns, how does it turn?

A Off the clutch of the car, sir.

Q Does that require an operator in the cab?

A Right, sir.

Q Who was the employee who was operating the cab?

A It was Transport.

Q This wench as it rolls it would put pressure on this chain down to here and over to the chiller to move it is that

13 continued.

A Right.

Q Do you understand that this in the cable that gave my men, though you didn't see it?

A Right.

Q And the closer, you didn't see that?

A Right.

\* \* \*

14 Q Now as this particular operation started you were in the area were you not, sir? You said you were working on the chiller and went to work on another, is that right?

A That's right.

Q Prior to the operation starting, did the operator of the truck, sitting in the cab, Mr. Lee Ward ever clear the area of men?

A What do you mean.

Q Did he get everyone out of the area?

A Nobody was cleared out of the area, the men who were in the area stayed there.

Q Did they warn them to get out of the area where they were working?

A There was no reason for it, sir.

\* \* \*

## CROSS-EXAMINATION

18

BY MR. MAHONEY:

Q I believe that you testified, that you and your men did not do anything with the rigging. Have you ever done any rigging?

A Yes, sir.

Q Do you as a matter of fact in the course of your work normally do rigging?

A Let me explain it this way, sir, normally we don't rig big machinery. We do pumps, small tanks, we don't rig anything large.

Q How long have you had experience in rigging or other types of machinery?

A About thirty years, sir.

Q Have you had any experience with machinery such as the rigging on the sides of the machines on this job?

A No, sir.

Q Did you leave the entire rigging operation to the contractors, Contractors Transport?

19

A That's right.

Q When did you do anything in connection with these chillers? after they were delivered to the work?

A After the chillers were lowered into the hole, we moved them to their place, the place where they were supposed to be and we didn't touch them again for maybe three months.

Q Now, from the time these chillers were brought to

the chiller, until the time they were actually at their final resting place, how many days did this take?

A Three or four days.

Q Three or four days?

A Right, sir, but when it came in the basement it was not necessarily completed.

Q When the riggers delivered the equipment or the chiller into the basement, what did you and your men do?

A We were moving the chiller into position from the top of the building and we jacked them up with railroad jacks to move the chiller ahead with the tables. Sometimes it was five feet, maybe two feet. When the chiller leveled, we would move them two feet at a time before we would get it in a straight line.

Q How many employees did you have on the job at that time?

A Myself and four men, sir.

Q Did you have as many as eight employees at that time?

A No, sir, I don't think so.

Q Do you recall a deposition that was taken in my office Mr. Cookley? The deposition that was taken on December 2, 1968.

THE COURT: Is this to refresh the witnesses recollection or for impeachment purposes?

MR. MAMONEY: Both, Your Honor.

THE COURT: Alright, let us proceed.

BY MR. MAHONEY:

Q And do you recall being questioned on how many workmen you had working with you?

A Yes, sir.

Q Do you recall saying you had eight Singleton employees?

A Yes, sir.

Q Do you recall, now, exactly how many men you did have on the job?

A Well, I am still not positive, but I would say four men and myself.

Q I am going to refer to this deposition at Page 52, and ask you if these questions were asked you and whether you made these responses. And you were asked who put the loading cable around the machines and you said, "my men did, sir." Did you say that?

A Right.

Q You mean your men secured the cable with which entered the machine?

21 A Yes, we had, and I was there and hooked the lead on to it. I released it and threw it out of the way and jacked the machine up and hooked it back into it.

Q In other words, did you rig those machines?

A Well, if you want to call it rigging, I did.

Q And you did put the cables in?

MR. MACBEE: Objection, Your Honor.

Q: COOKLEY: He had a right to cross this line.

MR. HANCOCK:

Q: In fact you did the rigging with your eight men and your men ran this load line. Did you have insulated this load line around the chiller?

A: Yes. Around the chiller. We ran the hook into the side of the cable and told the men to pull it.

Q: Your men were pulling these things around here?

A: I don't recall that, sir.

\* \* \*

BY MR. HANCOCK:

Q: Let me direct your attention, Mr. Cookley, to the night before the accident, December 14, 1964. What if anything did you do with any of your rigging equipment that day?

A: To my knowledge, anything, other than we may have helped them pick up the rigging and put it on the chiller.

Q: How many men did Contractors Transport have on the job?

A: Normally, two or three.

Q: Wasn't the other one, Mr. Ward, working under your supervision?

A: Yes, sir.

Q: And you were in charge of the operation and Mr. Ward was lending you assistance?

A: No, Mr. Ward was supposed to have experience in rigging.

Q Well, didn't Mr. Ward show you how to set up the finished work at the end of the day, and would you do it and your men do rigging at the end of the day? Didn't you do the rigging the morning of the 15th?

A I never did rigging on the job.

Q Do you, sir, refer the wrapping around of the chiller with the rigging, not doing rigging?

A No. All I did was to put the cable around the chiller he produced the lead lines out.

Q On the day before, did you not find a fix in the cable? And did you not cut six feet of the cable off?

A I did that for him, sir.

Q You did it, didn't you?

23

A We done it.

Q What exactly did you do with the cable?

A Nothing.

Q But you cut six feet off, sir?

A Yes, sir. There was a certain fraytation there, sir, and we wanted to get rid of it.

Q Well, I am asking what you did?

A I cut it into forward.

Q Are you telling us Mr. Ward told you to do this?

A Right. We had the burning equipment down in the basement.

Q Did you do anything else with the lead line or did you

Do anything else the day before?

A Nothing, sir.

Q On the morning of the accident, Mr. Cookley, where were you in relation to the chiller?

A From that place there, the top of the chiller. If you had the chiller on the side line from that lead line, I was right there (indicating).

Q This one?

A Yes, that's the one.

Q What were you doing there?

A Cutting bulk off on the slide where they were lowering the chiller down onto the concrete.

Q And where was Mr. Ward?

A I don't know.

Q Was he working with you at that time?

A No.

Q Other than Mr. Ward, was there a man in the wench truck?

A If the wench was working, there was one there.

Q Tell us whether any rigging was done on the floor that morning of the 15th?

A I presume so, sir. The only way it could have been hooked up.

Q And who did that?

A Transport. He was the only man on the job.



Q Are you telling us, that one man, Mr. Ward, did that and the other employees of Contractors were outside of the truck and he did all this rigging on the morning of the accident?

A Well, maybe he didn't get into the truck until all of the rigging was done.

Q Are stating that all that rigging was done by two men?

A Well, he didn't get into the truck until all the rigging was done. There was no purpose for him to be in the truck.

\* \* \*

26

BY MR. MAHONEY:

Q Now, Mr. Coakley, this accident happened at 8:15 in the morning.

A That's right, sir.

Q And you answered that until Mr. Wiseman came and left, the job was idle?

A Well, we didn't do anything, we were cutting bolts off during that time.

27

Q Is it your testimony that after this accident occurred you didn't go right back and get another choker and hook up the lead line and get the machine going and get right back to work?

A No, I did not, there was too much confusion.

Q I'm not saying immediately afterwards?

A Well, it would have been two hours afterwards.

Q And you didn't do anything about moving the chiller

for the home?

A I don't think we did, no.

Q When did you decide to use the chiller that was hooked up?

A They hooked it up.

Q Did you and the men hook it up?

A Mr. West hooked it up.

Q You didn't do anything?

A He more than took up the chiller itself.

Q When you did rig in this area down here (indicating).

A Well, we moved the rollers around and put in some cribbing up near the thing back.

Q How much does that snatch bar weight?

A Roughly twenty to thirty pounds, but it is roughly a guess.

Q And can one man put the snatch bar on the cable and hook it down here?

A Sure.

Q And one man did all this work?

A Well, all he would have to do is release the brake on the cable and pull the cable right out of the reel.

\* \* \*

Q Let me ask you, Mr. Coakley, you were the foreman on the job for Singleton, right?

A Right.

Q And Singleton had this contract with the Washington Gas Light Company to install these chillers, right?

A Right.

Q And Singleton had the contract with Contractors to bring these chillers in, right?

A Right.

Q Now from any time from December 10, 1964, to the morning of December 15, 1964, did you ever examine any of the cable to the load line or anything of that sort?

A No, sir.

Q Did you ever have occasion on December 15, 1964, to look at this choker?

A No, sir.

44 Q Did you ever have an occasion to observe it or be close to it at all?

A Not to my knowledge, sir.

Q If I understand, and correct me if I'm wrong, I believe you testified your many years of experience?

A Yes, sir.

Q In rigging, right?

A No, sir, I didn't say that, I said in steamfitting.

Q You are experienced in rigging?

A I wouldn't say I am, I can rig.

Q If anything looked unusual about this choker, would

you didn't notice it?

A I think I would, sir.

Q On this morning of April 15, 1964, you didn't notice anything unusual at all?

A I didn't look for it at all.  
 OF MR. BEFFELFINGER:

Q Now, Mr. Cookley, correct me if I am wrong sir, but I understand that in your direct examination or possibly the examination of Mr. Mahoney, that you did not tell or warn your men to clear the area where this machinery was? Because there was no reason to tell the men to clear the area, is that correct?

A That's correct.

Q Isn't an area like this on every job a dangerous area, Mr. Cookley?

A I wouldn't think so, sir.

Q Now, Mr. Cookley, I will ask you sir, and gentlemen directing your attention to page 38 and 39 of the deposition, if the following questions were not asked of you, and the following answers given by you:

THE COURT: Let me ask you a question, first. Are you asking the questions for the purpose of refreshing his recollection or for impeachment purposes?

MR. BEFFELFINGER: Contradiction, Your Honor.

THE COURT: For impeachment.

MR. HEFFELFINGER: Yes, Your Honor.

\* \* \*

48

BY MR. HEFFELFINGER:

49

Q Now, Mr. Coakley, I say again directing your attention to these question which were asked of you, I am going to read them to you as you gave were your answers on Page 38.

Q "Then from your experience, Mr. Coakley, in this forty-eighth year am I correct in assuming that it is dangerous to work around any wench, where there might be an operating and pulling cable"?

\* \* \*

BY MR. HEFFELFINGER: And then your answer was:

"I would say it was one of the hazards of the job"  
Is that your answer?

A That's right.

Q "Then it would be dangerous then"?

A I would think so, even working is dangerous.

Q Alright, on this particular job didn't you advise your employees of Singleton Company, its employees to stay away from the area of this truck and wench, also your answer:

"I always do, sir".

A That's right, sir.

Q "You told Mr. Dawson this, did you not"?

A I think I told him, the hold crowd of them, is that..

Q Is that correct?

A Yes, sir.

Q "That was before I got out of the car, right?"

A Right, sir.

Q You did not get out of the car, why is that necessary for him to stay out?

A No.

Q Why is it dangerous, sir, then?

A It is.

Q "Anything you are picking up something or moving something, it is dangerous". Was that your answer, sir?

A Right.

\* \* \*

BY MR. FLETCHER:

Q Mr. Corlley, I ask you sir, on this same date and time if this question wasn't asked of you and your answer given:

"How many workmen did you have working for you?"

"I had about eight men down there".

"There were about eight Singleton employees"?

"Right, sir".

A I probably said that.

\* \* \*

50

51

## CROSS EXAMINATION

BY MR. MAHONEY:

Q Did I understand you to say in response to Mr. Heffelfinger's question, that you did not inspect this load line at any time before the accident?

A Will you repeat that please.

Q Did I understand you to say in response to Mr. Heffelfinger earlier, that you did not inspect this load line at any time before the accident?

A What would you call inspect, sir?

Q To look at it, to examine it.

A Well, I walked by it every day.

Q You mean going along the whole thing? And checking it?

A No, I did not.

Q Now, in response to a question that I asked you yesterday, didn't you tell me and the Court, and the ladies and gentlemen of the jury, that you discovered that six feet of this load line was frayed?

THE COURT: Haven't we already been all over this. What's the use in going of going all over it again, Mr. Mahoney?

MR. MAHONEY: It's in response to him never - -

THE COURT: No, no, I am not going to retry this whole issue.

\* \* \*

BY MR. H. H. HENRY:

Q What was the condition of the load line on the morning of the accident? Was there a lot of loading upon the entire load line?

A I could not answer that.

\_\_\_\_\_  
\_\_\_\_\_



2

MAC ARTHUR HARRIS

was called as a witness, and being duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. MAGEE:

Q Mr. Harris, would you please state your full name and give us your address, please?

A My name is MacArthur Harris; 127 John Robert Street, Alexandria, Virginia.

Q Mr. Harris where are you presently employed?

A James Clock Company.

Q What type of business is that?

A I am a steamfitter.

3 Q How long have you been in the steamfitting business, Mr. Harris?

A Seven years.

Q Would you briefly tell the Court and jury what your background experience is and where you had your training in the steamfitting business?

A U.A. School, two nights a week for five years and on-the-job training.

Q And what classification of the plumbing or steamfitting industry are you now working, Mr. Harris?

A I am a journeyman.

Q Would this be a journeyman steamfitter?

A Yes.

Q Have you printed any union or are you a member of any union in the steamfittering field?

A Yes, I am.

Q What is that union?

A Irons 602.

Q Now, in the District of Columbia?

A Yes.

Q And you are a member today in good standing in this union?

A Yes, I am.

Q Who assigned you to the various jobs in the industry, Mr. Harris?

A Sam Townsend.

Q Of the steamfitters' union?

A Yes.

Q Now, directing your attention to December of 1964 and calling your attention to a project known as the Watergate Project in the city of Washington, D.C., were you working on that project in December of 1964?

A Yes, I was.

Q And for whom were you working at that time, Mr. Harris?

A Well, I was working for Jody Dubb at first and he sent me domestres to help Mr. Conkley.. (Homes spelled phonetically)

Q What company were you working for by name?

A William Singleton.

Q Now, on December 4 were you working on the job when some large chillers were brought into the Watergate to be installed?

A Yes, I was.

Q And now how many chillers, if you recollect, were being installed in December 1964?

A Three.

Q Were you working in December when the chillers were actually delivered to the job site?

A Yes, I was.

Q Who delivered the chillers to the job site? Did Singleton Company do it or someone else?

A I think another contractor did it.

5 Q Another contractor. What type of contractor were they?

A Transporting heavy equipment.

Q What business were they engaged in, would you call this rigging business?

A Yes.

Q How did they actually unload these chillers into the basement area? How was that done?

A With a crane dropped it through into the basement.

Q Were openings in the basement there at the time?

A Yes, the opening was in the basement.

Q Do you recall what stage of construction, how many

chiller, I would have been able to tell you that. By passed, I mean, I would have been able to tell you that.

A I guess that's all. I would have said that, yes, yes, then.

Q Did the chiller come out of the building that section?

A It was pulled out.

Q This section, did it come out of the building?

A Yes.

Q And now when you think when we were these three chillers did all three come out at once, or you had one or two on separate occasions? All on one day, for example, or did it run over more than one day?

A I don't remember.

Q OK. After the chillers, as you said, were lowered by the crane and the cable into the basement area, who moved these chillers after they were in the area?

6 A They was winched in by the transport truck. They were down in the basement.

Q Did the truck belong to Singleton or the rigging company?

A Belongs to the rigging company.

Q And now, was there anything else used in connection with this rigging of these chillers into place besides the truck, like cables and slings of this sort?

A They had them cables that pull it.

Q Did they have to have rollers to go under the chillers to move them over the floor?

A Skates, yes.

Q Were jacks needed to jack this equipment up for moving purposes?

A Right.

Q Was this Singleton Company's property? Did you folks bring it there or the riggers?

A I think the riggers brought it there.

Q Now, was this truck in this building and did it stay there or did it move out each day during the rigging operations?

A They loaded up about 3:30 and left every day.

Q What time would you start working in the morning on this job?

A I usually start about quarter to 8:00.

Q When they left every day did they take this rigging equipment with them and bring it back the next day?

7 A Yes.

Q By "they" I am referring to the rigging company. Transport, you called them?

A Right; who the truck belongs to, right.

Q Now, at any time during the depositing or lifting these chillers into the building, who did this operation? Did you folks do it Singleton or was it done by riggers?

A I am not a lawyer.

Q Now, if there is a rigging, as to how they turn the  
b or not? Was it a rigging, or was it a rigging of the rigging?

A Well, the rigging is a rigging, it's a rigging into the back-  
ing, it's a rigging.

Q When the rigging is a rigging, is it a rigging up the  
rigging, or is it a rigging down the rigging, or is it a rigging  
the rigging?

A The rigging, rigging.

Q Did you do any rigging?

A No, just positioning, the skates, that's all.

Q Tell the Court and jury what is meant by positioning  
the skates?

A Well, I think the rigging company had a guy come around  
told us which position he wanted the skates. He had a long bar  
that hooks to the back of the skate and twist it. You set it  
to turn it so you could turn the front and set it so the back can  
turn.

8 Q Did this have any connection with the rollers underneath  
the chillers? Do the skates affect the course of these rollers?

A That is what I am talking about, the skates, that is  
a roller.

Q These are the same thing, skates and rollers are the  
same thing?

A Yes.

Q You were helping position the rollers, is that correct?

A Right.

Q Now, insofar as jacking these rollers up, did you folks help in the jacking?

A Yes.

Q Did you see any other employees of Singleton ever put up this wire and cable rigging that was used on the days you were there?

A No, I think we was told what to do.

Q Did Mr. Coakley engage in any of the rigging, that is, setting up the operation or was it done by the riggers?

A I never seen him.

Q You never saw Mr. Coakley ever doing any rigging?

A No.

Q Did you ever see any other men you work with from Singleton actually doing the rigging?

A No.

9 Q Now, on December 15, 1964, the date of the accident, were you there when an accident occurred, Mr. Harris?

A Yes, I was.

Q And this accident occurred in the morning. Can you tell us the approximate time, was it early in the morning or do you remember?

A I wasn't there too long before that happened.

Q Were you working in this area of the building all the

time were running on that job in the same way?

A I was watching it the whole time in the morning.

Q Well, when the rigging company came, did you see any people?

A Yes, I saw a few people, but I don't know if it was in the morning.

Q So you have no recollection of your last recollection, how many men were there doing work for Simpson at that time?

A About five or six, I think.

Q That is your best recollection, about five or six men?

A Yes.

Q Now, do you recollect how many men were there working for the rigging company, do you have any recollection of this?

A Probably three.

Q That is your best recollection?

A Yes.

Q Now, what was going on and could you please tell us where you were when the accident actually occurred?

10 A I was standing back holding a bar in my hand.

Q How far away were you from this winch truck which was operating the winch at the time of the accident?

A About 15 feet.

Q Now, how is this winch operated? From the cab or from some other sources? How is it operated?

A The winch? The winch was on the truck near the cab.



Q Who operated that winch? Was it a Singleton man or rigger?

A Rigger, I guess.

Q Wasn't one of your men in the truck?

A No.

Q There were one or two other men there also during this time according to your best recollection who were riggers, is this correct?

A Yes.

Q Did you know the names of any of these riggers?

A No.

\* \* \*

BY MR. MAGEE:

Q Do you know Mr. Russel Dawson who sits here at counsel table with me, Mr. Harris?

A Yes, I do.

11 Q Had you met him during your steamfitting work?

A Yes, I have. I only knew him by the name "Babyface" until today.

Q But you do know him as "Babyface" being Mr. Dawson?

A Right.

Q You worked with him before on other steamfitting operations prior to the Watergate job?

A Yes, I have. I worked with him in Springfield, Virginia.

Q Now, was Mr. Dawson working during these days when

there didn't seem to be any other way to get the lumber and moved into position in the middle of the road in 1964?

A Yes, sir.

Q For the purpose of this trial, as the date of the accident and for the purpose of this trial, where was Mr. Dawson?

A He was just passing.

Q By passing you, according to the map too in this direction, did he pass you in this direction or on this side -- left or right as I stand?

A He passed me going towards the truck.

Q Towards the truck. How far did he get from you, if you can recollect, before this accident occurred?

A That was a short time later. I'd say about 30 seconds.

Q Was he walking when this occurred?

A Yes, he was walking.

12 Q Tell us what actually happened as you remember it in regard to the accident?

A You mean towards the accident?

Q Just before and at the time of the accident, what do you remember about what happened?

A I think we was taking the skids out from beneath one of the chillers and I think someone had just cut one of the bolts and I think they told Mr. Dawson to go get a sledge hammer.

Q Do you remember who it was, was it you or a Singleton man or was it the rigger or one of the riggers asked him to get the sledge hammer, do you recall who it was?

A I think it was one of the Singleton men.

Q Then what did he do?

A I think they started pulling on the chiller.

Q Who would do that, Singleton or the riggers?

A The riggers.

Q Then what happened?

A And I think the way the skates and things was squeeking someone said, "Everybody stand back," you know; then a short time later there was a crash, you know, like, and then I seen Mr. Dawson stumbling forward.

Q Now, how far away from the rigging truck was Mr. Dawson when you saw him after this crash stumble and fall?

A I guess about ten feet.

13 Q About ten feet?

A Uh huh.

Q Which way did he fall, backwards or what direction?

A He fell away from the truck.

Q Would that be toward the wall?

A Yes.

Q With respect to the wall which would have been to the left of the truck, assuming the truck was in this direction (indicating on drawing) how near to the wall was Mr. Dawson when

1. 10. 2. 7. 12. 28. 17

A I don't know what it was. I just saw it and I saw it from the front.

Q Now, when you saw it, did you see anything else at the same time?

A I don't know what it was. I don't know what it was.

Q I understand, I don't know what it was, I don't know what it was, I don't know what it was.

Now, you said it was a car, could you describe this to the jury and tell them what the car was like as you saw it on that occasion? Was it a car like, something like that, or what?

A Something like something breaking.

Q After you heard the crash you saw Mr. Brown fall. Then what did you do?

14 A Well, I went to see Mr. Brown.

Q Mr. Cookley was a Singleton man, is that correct?

A That is correct.

Q Where did you have to go to get Mr. Cookley, do you recall?

A I think he was standing behind the chiller that they was pulling.

Q And you went to him and then did you go over to where Mr. Brown was?

A Yes, I did.

Q Did you see anything in Mr. Dawson's area?

A That was the piece of wood.

Q What was the condition, describe the piece of wood and the condition in which you saw it at that time, Mr. Harris?

A Well, it was a piece of wood about that long (indicating)

Q Would you estimate that to be about two feet long? You put your hands out this far (indicating).

A I didn't measure it but I would guess.

Q The size of it in terms of inches, 2 x 4 or 3 x 4?

A I don't remember.

Q What was the condition of each end of this piece of wood?

A One of the ends was broken.

Q You observed this at the time?

A Yes, at the time.

15 Q This was in Mr. Dawson's area, is this correct?

A It wasn't laying too far from him.

Q Then what did you and Mr. Coakley do when you came back where Mr. Dawson was on the ground?

A When I came back I think there was two more fellows standing around and they lifted his head up and put it on a block of wood.

Q How long did you stay in that area after the accident?

A About ten or fifteen minutes. They were trying to get him out of the car and he didn't want to get out.

Q How long did you stay in the car did you go?

A I stayed in the car.

Q Did you ever go to the apartment?

A Yes, I have.

Q Did you ever do any work for the police department that day?

A No.

Q Now, what was the condition of the lighting in the area where this accident occurred, Mr. Harris?

MR. W. BARNARD: I object, Your Honor.

THE COURT: If he knows. Do you know what it was?

THE WITNESS: Yes, I know what it was. It was poorly lighted. They had lights strung up but it was dark.

BY MR. BARNARD:

Q Were these just ordinary light bulbs strung up as distinguished from floodlights?

A Ordinary light bulbs.

Q Were there any floodlights in the area?

A I didn't see any.

Q Now, Mr. Harris, you have told us that you are a journeyman steamfitter today?

A Yes, I am.

17

BY MR. MAGEE:

Q What are the requirements, physical requirements of a steamfitter in your industry?

A You need both your hands, arms; you carry a lot of pipe, carry a lot of heavy equipment like valves and stuff like that.

Q Could a person who has an incapacitated arm be a steamfitter?

A I haven't seen any.

\* \* \*

## CROSS EXAMINATION

BY MR. MAIDNEY:

Q Mr. Harris, you testified you came on that part of the job where they were moving chillers, when they first started to move them or did you come sometime later?

A No, I was there when they first put them in.

Q First brought them in?

A Yes.

Q Now, the Contractors Transport Company brought the chillers to the job site did they not?

A On trucks, yes.

Q This company who lowered the chillers into place, the Contractors Transport, they lowered it by means of a crane down into the basement?

A Right.

\* \* \*

Q How many employees were working with you?

A About five.

Q Now, wouldn't they wait for the derrick after it was rigged or wouldn't they waiting is after the rigging was in place?

A After the derrick was on the slide that is when they came -- it was on the pad, then is when they took the slides out from underneath it.

Q Then I am talking about rigging I am talking about the derrick, that is the things that go around the column and everything, they put that all on first before they start moving it, don't they?

A I didn't do any of that.

Q I understand. Do you know who died?

A The riggers.

Q Do you ever refer to any of your employees as riggers?

A No -- stevedores.

\* \* \*

27 THE COURT: Let me see if I understand your issue now that the case has gone on two or three days. Lets put this case in proper perspective.

The jury of course has heard all the testimony, from your opening statements and from what counsel have been trying to develop in this case.

28 I think it comes down to this: Contractors Transport Company, represented by Mr. Mahoney, are contending they were



not negligent, that they were not negligent. That company is contending through the attorneys they were not negligent.

\*\*\*

Any argument about that statement?

MR. MAGEE: No, Your Honor. I think Your Honor stated it quite correctly.

THE COURT: All right. If you keep those things in your mind you will understand it better. Lets proceed.

\*\*\*

29 ... THE COURT: All right, gentlemen, we will first discuss Plaintiffs' proposed instructions.

MR. MAHONEY: Your Honor, I think I mentioned to Your Honor before that I had a matter to take up at the conclusion of the evidence which is on the cross claim. I would like to make a motion now for a directed verdict on the cross claim. If Your Honor would hear that first?

THE COURT: All right.

MR. MAHONEY: The evidence has shown, if Your Honor please, that the --

MR. GREGG: If I may say this before we get involved in this, and I told this to Mr. Mahoney, I was under the impression the cross claims between defendants were to be heard by the Court following the jury verdict; therefore, a motion of this type would be inappropriate.

THE COURT: That is what I thought.

MR. MAHONEY: I thought at the beginning of the case we were to submit the question of negligence to the jury and then Your Honor would --

THE COURT: --submit the question of negligence against whom?

MR. MAHONEY: Against Singleton.

30 THE COURT: That wasn't my understanding. I thought I was to decide the whole thing --negligence, any contribution, if anything. Wasn't that your understanding?

MR. GREGG: Yes, sir.

THE COURT: So it wouldn't confuse the issue.

MR. MAHONEY: I was referring to the Martello vs Hawley case which was the case relied on by Murray.

If the jury finds the settling tort feisor is negligent then the judgment is credited by fifty percent. So Murray took that rational.

THE COURT: That was not my understanding. I don't know about counsel. He just stated it was not his.

MR. MAHONEY: My understanding was at the beginning that Singleton would be identified as the employer and that the question of its negligence would be determined. The jury would only find whether or not Singleton was negligent and nothing to do with the cross claim. The legal effect of the/cross claim is whether 50% Martello credit would apply would depend upon the jury's finding. That is what I thought.

THE COURT: Lets hear from Mr. Magee. What was your understanding?

MR. MAGEE: Your Honor, if he is putting it on that basis then I submit that if there is no negligence to hold in Magazine it is less to hold Singleton.

THE COURT: That is not the question for the Court.  
31 The question is what was the understanding when we first started out? My impression was I would decide the question of negligence and everything after the jury verdict in this case, whether or not there is any evidence against Singleton, and if so whether it contributed to this accident. Then I'd decide how much to reduce the verdict by if it is in favor of the plaintiff, of course, or anything connected with that cross claim. That was the very purpose of taking it away from the jury.

MR. MAGEE: Cross claim, Your Honor, but not contributory negligence.

THE COURT: Counsel for the defendant can argue it wasn't our fault, it was Singleton's fault.

MR. MAGEE: Yes, sir; and I understood Your Honor would rule as a matter of law what these facts --

THE COURT: Not at this time.

MR. MAGEE: No, no, after the jury verdict.

THE COURT: My understanding is I would take care of it after the jury verdict.

MR. MAGEE: That is the way I understood it.

THE COURT: That's the way I understood it, the three of us understand it, and we will wait till the jury verdict and find out what it is.

MR. MAGEE: Yes, sir.

\* \* \*

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UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

RUSSELL L. DAWSON,  
VADA DAWSON,

Plaintiffs,

vs.

Civil Action No. 551-67

CONTRACTORS TRANSPORT CORP.,

Defendant and Third  
Party Plaintiff,

vs.

WILLIAM H. SINGLETON CO.,

Third Party Defendant.

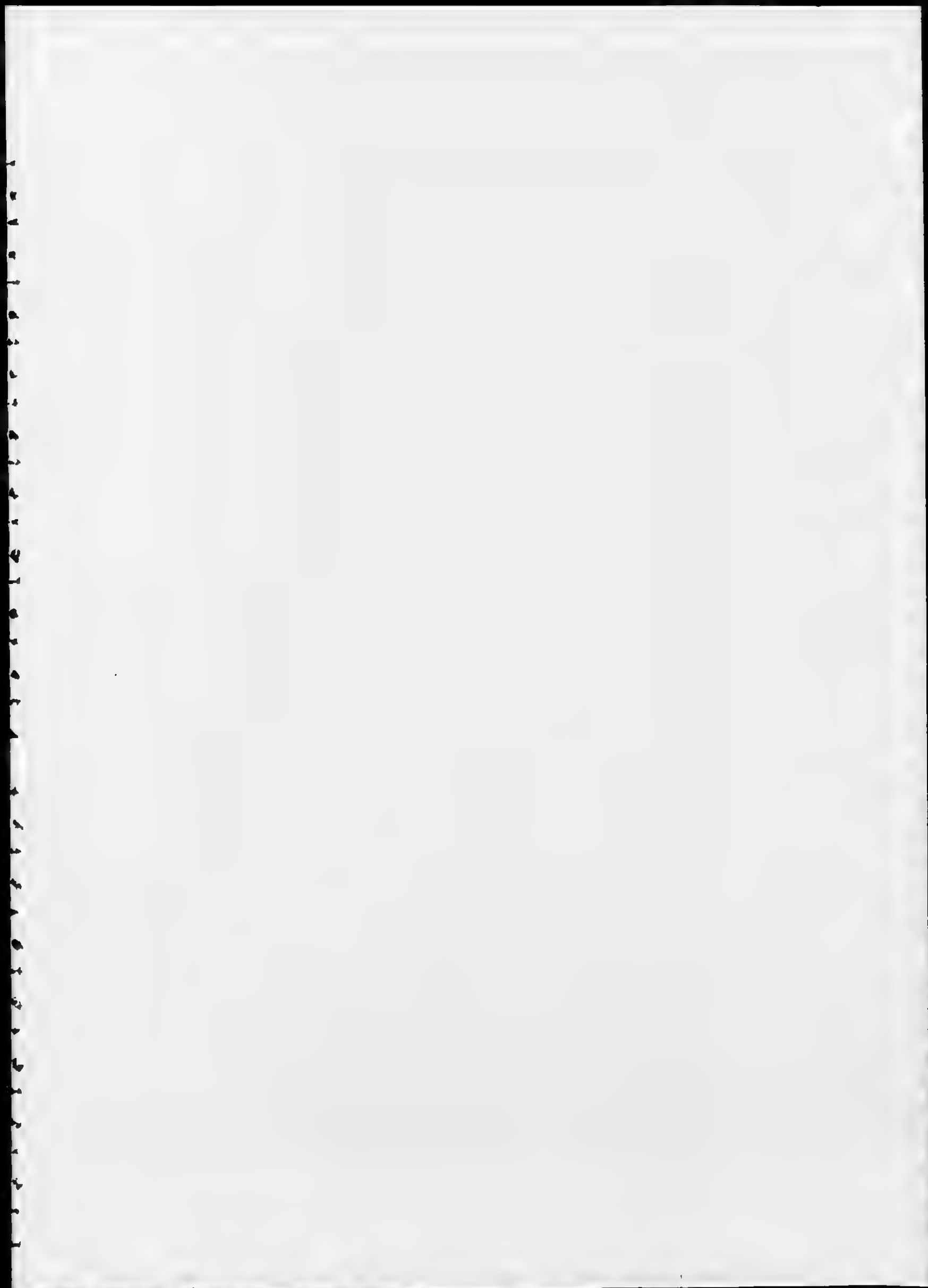
PRAECIPE

The Clerk of the Court will please enter a credit in the amount of \$50,000.00 on behalf of Contractors Transport Corp. (Defendant and Third Party Plaintiff) on the Verdict and Judgment in the sum of \$100,000.00 entered in the above-entitled civil action on the 20th day of February, 1970, in favor of the plaintiff, Russell L. Dawson, against the defendant, Contractors Transport Corp;; said credit to be entered of record as of the 30<sup>th</sup> day of September, 1970.

*Warren E. Magee*

Warren E. Magee  
1730 K Street, N. W.  
Washington, D. C. 20006

Attorney for the plaintiff,  
Russell L. Dawson



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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

No. 24,533

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RUSSELL L. DAWSON,

*Appellee,*

v.

CONTRACTORS TRANSPORT CORPORATION,

*Appellant,*

v.

WILLIAM H. SINGLETON COMPANY,

*Appellee.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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APPELLANT'S BRIEF

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United States Court of Appeals  
for the District of Columbia Circuit

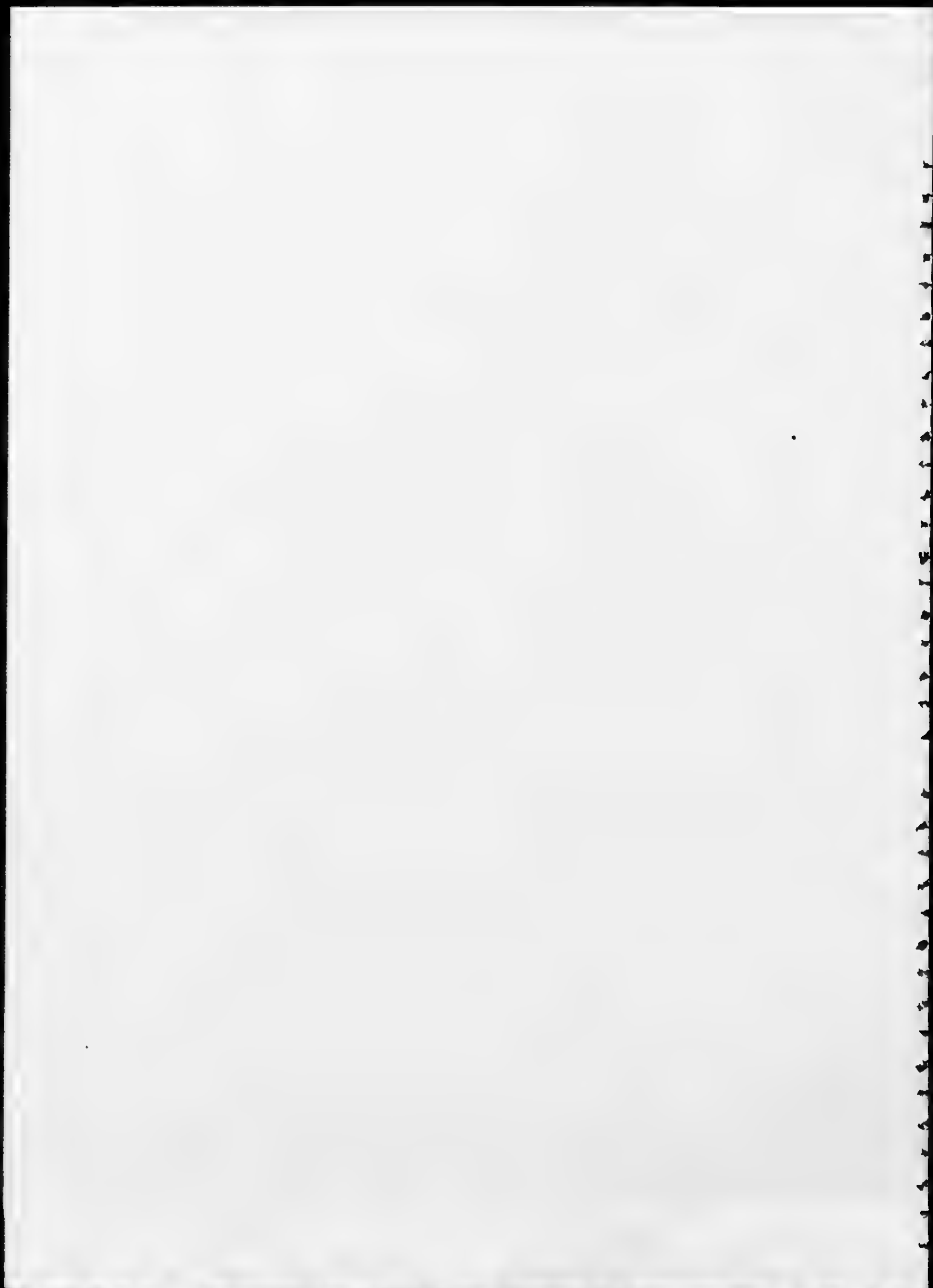
FILED OCT 22 1970

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41 Am Jur 2d § 40 .....	16

#### REFERENCES TO RULINGS

The Court below denied Contractors' cross-claim against Singleton [J.A. 45] and thereafter entered findings of fact and conclusions of law with regard thereto [J.A. 46 A-F].

The Court's ruling denying Contractors' right to a jury trial on its cross-claim appears on [J.A. 261, this brief p. 7].

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24,533

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RUSSELL L. DAWSON,

*Appellee.*

v.

CONTRACTORS TRANSPORT CORPORATION,

*Appellant.*

v.

WILLIAM H. SINGLETON COMPANY,

*Appellee.*

---

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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APPELLANT'S BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW\*

In the opinion of the appellant there are two inter-related issues in this appeal and they are whether Contractors was erroneously

\*This case has not previously been before this court.

denied a jury trial on its cross-claim against Singleton and, if so, whether a jury, based upon the evidence presented, could find that Singleton was negligent and, as such, would have been jointly liable with Contractors to plaintiff for damages except for the bar of the D.C. Workmen's Compensation Act.

### STATEMENT OF THE CASE

For the purposes of this brief the parties will be referred to as follows: Plaintiff below, and appellee Russell Dawson as Dawson. Defendant and third-party plaintiff below and appellant Contractors Transport Corporation as Contractors and third-party defendant below and appellee W. H. Singleton Company, as Singleton.

Dawson, joined by his wife, filed suit below against Contractors and Magazine Brothers Construction Company (not a party to this appeal) alleging injuries and damages arising out of a job-connected accident on December 15, 1964, during the construction of the Watergate Apartments. (J.A. 8). A third-party complaint was filed by Magazine Brothers Construction Company against Singleton, plaintiff's employer seeking indemnification of any sums rendered in favor of plaintiff against it. (J.A. 15).

Thereafter Contractors filed a cross-claim against Singleton seeking application of the *Murray*<sup>1</sup> credit contending that Singleton, as Dawson's employer, would also be liable to him except for the bar of the D.C. Workmen's Compensation Act. (J.A. 27). Dawson applied for and received compensation benefits which totalled approximately \$23,000 at the time of trial. (J.A. 211).

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<sup>1</sup>*Murray vs. United States*, 132 U.S. App. D.C. 91, 95, 405 F.2d 1361, 1365 (1968).

This case came on for trial before Judge Sirica sitting with the jury and after the conclusion of all the evidence, the Court directed a verdict in favor of Magazine Brothers Construction Company. Dawson's case against Contractors was submitted to the jury which culminated in verdicts in favor of Dawson for \$100,000 and for his wife for \$10,000. (J.A. 219).

The judgment in favor of plaintiff Vada Dawson was paid and satisfied. (J.A. ). And, one-half the judgment in favor of Dawson or \$50,000 has now been paid and satisfied in accordance with *Murray supra* (J.A. 262) as the singular issue before this Court is whether Contractors was entitled to a jury trial on its cross-claim to determine if Singleton was also negligent. If so, the Court would then apply a 50% credit to Dawson's judgment.

The Court below, contrary to an understanding made at the outset of the trial withdrew the issue of Singleton's negligence from the jury and decided that issue as a non-jury matter following the jury verdict. The Court denied Contractors cross-claim and then entered findings of fact and conclusions of law in favor of Dawson and Singleton (J.A. 46-7). An appeal was noted by Contractors from the judgment in favor of Dawson against it and also from the judgment in favor of Singleton on the cross-claim. However, Contractors does not challenge Dawson's verdict and judgment except insofar as it is affected by its cross-claim against Singleton.

With respect to the first point raised on appeal, jury trial was demanded by plaintiffs and defendant Magazine and the case was docketed as a jury case. (J.A. 1, 13, 23).

On the morning of the first day of the trial, the procedure for the handling of the various claims was discussed out of the presence of the jury, and it was agreed then that the jury would consider the issues of negligence of the three parties, namely Magazine, Contrac-

tors and Singleton. The Court would later decide the cross-claim based on the jury's findings (J.A. 49):

"The Court: As I see it, the only thing to be submitted to the jury, if the case gets to the jury, is a case against Contractors Transport Corporation, Magazine Brothers Construction Corporation and the third-party defendant Singleton Company now known as Limbach Company. Those are the only three cases submitted to the jury."

The Court restates its position after further colloquy among counsel (J.A. 50) and again in (J.A. 51). And later in the trial in a discussion with counsel: (J.A. 212)

"The Court: Let me ask you this. If the jury could find \* \* \* that this accident was caused solely by negligence of the remaining defendant, Transport, or they could find, I suppose, *it was caused jointly by the negligence of Transport and Singleton?* \* \* \*" (Emphasis supplied.)

However, when the evidence concluded, the following discussion out of the presence of the jury, took place:

\* \* \*

[J.A. 258-261]

EXCERPT FROM PROCEEDINGS OF  
Monday, February 16, 1960

*Afternoon Session - 3:25 p.m.*

... THE COURT: All right, gentlemen, we will first discuss Plaintiffs' proposed instructions.

MR. MAHONEY: Your Honor, I think I mentioned to Your Honor before that I had a matter to take up at the conclusion of the evidence which is on the cross claim. I would like to make a motion now for a directed verdict on the cross claim. If Your Honor would hear that first?

THE COURT: All right.

MR. MAHONEY: The evidence has shown, if Your Honor please, that the—

MR. GREGG: If I may say this before we get involved in this, and I told this to Mr. Mahoney, I was under the impression the cross claims between defendants were to be heard by the Court following the jury verdict; therefore, a motion of this type would be inappropriate.

THE COURT: That is what I thought.

MR. MAHONEY: I thought at the beginning of the case we were to submit the question of negligence to the jury and then Your Honor would—

THE COURT: —submit the question of negligence against whom?

MR. MAHONEY: Against Singleton.

THE COURT: That wasn't my understanding. I thought I was to decide the whole thing—negligence, any contribution, if anything. Wasn't that your understanding?

MR. GREGG: Yes, sir.

THE COURT: So it wouldn't confuse the issue.

MR. MAHONEY: I was referring to the Martello vs Hawley case which was the case relied on by Murray.

If the jury finds the settling tortfeasor is negligent then the judgment is credited by fifty percent. So Murray took that rational.

THE COURT: That was not my understanding. I don't know about counsel. He just stated it was not his.

MR. MAHONEY: My understanding was at the beginning that Singleton would be identified as the employer and that the question of its negligence would be determined. The jury would only find whether or not Singleton was negligent and nothing to do with the cross claim. The legal effect of the cross claim is whether 50% Martello credit would apply would depend upon the jury's finding. That is what I thought.

THE COURT: Let's hear from Mr. Magee. What was your understanding?

MR. MAGEE: Your Honor, if he is putting it on that basis then I submit that if there is no negligence to hold in Magazine it is less to hold Singleton.

THE COURT: That is not the question for the Court. The question is what was the understanding when we first started out? My impression was I would decide the question of negligence and everything after the jury verdict in this case, whether or not there is any evidence against Singleton, and if so whether it contributed to this accident. Then I'd decide how much to reduce the verdict by if it is in favor of the plaintiff, of course, or anything connected with that cross claim. That was the very purpose of taking it away from the jury.

MR. MAGEE: Cross claim, Your Honor, but not contributory negligence.

THE COURT: Counsel for the defendant can argue it wasn't our fault, it was Singleton's fault.

MR. MAGEE: Yes, sir; and I understood Your Honor would rule as a matter of law what these facts—



THE COURT: Not at this time.

MR. MAGEE: No, no, after the jury verdict.

THE COURT: My understanding is I would take care of it after the jury verdict.

MR. MAGEE: That is the way I understood it.

THE COURT: That's the way I understood it, the three of us understand it, and we will wait till the jury verdict and find out what it is.

MR. MAGEE: Yes, sir.

THE COURT: Lets discuss plaintiffs' instructions. Some of these are standard instructions and will be covered in substance in my instructions anyway. (Discussion of instructions not transcribed.)

Again, at the conclusion of all the evidence, over the objection of counsel, the Court ruled that it would determine the question Singleton's negligence. (J.A. 212A). Further objection was made before the jury retired. (J.A. 218). Then in its findings of fact the Court states: (J.A. 46)

"At the commencement of the trial and before the opening statement of counsel for the plaintiffs and the introduction of any evidence, counsel for all parties agreed and stipulated in open Court that the Third Party Complaint filed by Magazine against the third party defendant, William H. Singleton Co. (hereinafter referred to as Singleton) and the Cross Claim of the defendant and third party plaintiff Contractors against Singleton would be decided by the Court without a jury after the conclusion of all the evidence and the return of the verdicts of the jury involving the plaintiffs' claims against the defendants, Magazine and Contractors."

With respect to the issue of Singleton's negligence, the evidence disclosed that Washington Gas Light Company had entered into a contract with the Singleton Company for the installation of the air conditioning and heating equipment in this project. The Washing-

ton Gas Light Company had leased the basement area for a term of 99 years. Three days before the occurrence of the accident, Contractors in accordance with agreement with Singleton, delivered to the job site three refrigeration machines and lowered them into the basement for the final installation. (J.A. 43). After the machines were lowered, Contractors then retained two men on the job, Lee R. Ward and his brother, Leonard Ward, to assist Singleton in the final positioning of the machines. The morning of the third day when the last of the three chillers was being moved into place with two Contractors employees and five to eight Singleton employees (J.A. 229, 230) engaged in this operation, a choker which was connected to a cable, which in turn was attached to the refrigeration machine, broke causing the cable to snap back and strike a wooden stake on the body of a winch truck. As a result, the stake was torn off the truck and struck Dawson who was walking close by. (J.A. 190, 80)

The first witness called in plaintiff's case was John R. Wiseman, a D.C. Safety Inspector, who arrived at the scene about an hour after the accident occurred. (J.A. 56) His investigation disclosed that there was no padding around the bar of the truck on which the choker had been placed to prevent it from being cut. (J.A. 76) Then there was no barricades or wooden type horses around the area in which the cable was pulling the refrigeration machine. (J.A. 79, 80). Moreover, the column around which the cable was placed did not contain any bagging and the clamps on the columns were improperly installed. (J.A. 73, 78, 80). Several specific safety regulations with respect to rigging operations were then offered through this witness as applicable to this job. (J.A. 84, 85). In addition, one complete lay of the load cable was missing, according to this witness, reducing its pulling capacity. (J.A. 72).

When Mr. Wiseman was returned to the stand as a rebuttal witness, he testified that the size of the cable, namely half inch, was in-

sufficient for the dead weight load. According to his calculations, an inch and 3/4 cable should have been used. (J.A. 207).

William L. Coakley, foreman for Singleton, testified that on the morning of the accident he had four men working under him [he stated there were eight men in his deposition (J.A. 224, 230); that his men were moving the chillers into place (J.A. 229); and that Contractors foreman was under *his* supervision (J.A. 231) but Contractors men did all the rigging. (J.A. 224) No inspection of the rigging was made by him on the morning of the accident (J.A. 240). However, he admits that the day before the accident he burned off about six feet of frayed cable from the line (J.A. 232).

In direct conflict to Mr. Coakley's testimony, Lee Ward, Contractor's foreman, testified the rigging on the morning of the accident was done by Singleton employees. (J.A. 117).

There was additional liability testimony from other witnesses including Dawson contained in the transcript of proceedings below and filed herein but, it is felt that this testimony is merely cumulative on the disputed factual issues and unnecessary to further support the points raised in this appeal.

### SUMMARY OF ARGUMENT

At the outset counsel for Contractors informed the Court that he wanted the issue of Singleton's negligence, alleged in its cross-claim, tried by the jury. A jury trial was demanded by Dawson and defendant Magazine and the case was docketed as a jury case. But through an apparent misunderstanding as to what the earlier agreement in this respect was, the Court, over objection, withdrew this issue of Singleton's negligence from the jury and then decided the case adversely to Contractors.

Dawson applied for and accepted compensation benefits for injuries sustained in the accident in question. It was contended by Contractors that Singleton, Dawson's employer, was negligent and would have been liable to plaintiff except for the bar of the D.C. Workmen's Compensation Act. Hence, Contractors should not be compelled to pay the full damages but rather one-half if the jury had found that Singleton was a co-tortfeasor. This issue, well supported by the evidence, was properly one for jury determination and the Court erred in deciding it as a non-jury matter.

### ARGUMENT

#### 1. THE COURT ERRED IN WITHDRAWING THE ISSUE OF SINGLETON'S NEGLIGENCE FROM THE JURY.

Although the cross-claim in question did not set forth a jury demand, the original complaint filed by Russell and Vada Dawson included a demand for a jury trial on all issues (J.A. 8, 13). Defendant and magazine also noted a jury demand. (J.A. 23). Such jury demand embraces all factual issues which go to the merits of the action by Dawson against the defendants Contractors and Magazine. 47 *Am Jur* 2d Jury § 15, n. 10, 11. And, as stated in 5 Moore's Federal Practice, pp. 343-44, § 38.45 (2d ed. 1964):

"In other words if a timely and proper demand for jury is made all other parties in the action who are affected by the demand may rely thereon and need not make a jury demand for issues embraced therein."  
[Quoted in *Collins vs. Government of Virgin Islands*, 366 F.2d 279, 284 (3rd Cir. 1966).

Also in 2B Barron & Holtzoff, Federal Practice & Procedure, § 877 at 49 (Wright ed. 1961) appears the following:

"Where a timely and proper demand for a jury is made by one party, all of the parties to the action who are interested in the issues as to which jury trial has been

demand may rely thereon and need not make an additional demand of their own."

And again in *Collins supra* the Court states at p. 285:

"Additional support for the proposition that Government is entitled to rely on the demand by its co-defendant for a jury is found in Rule 39(a), Federal Rules of Civil Procedure, which provides in part that '[w]hen trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action.' Since an initial demand for a jury will cause the designated issues to be docketed for jury action, it becomes superfluous for another party to make a similar demand, and hence such a party should be allowed to rely on the initial demand."

## II. THE ISSUE OF SINGLETON'S NEGLIGENCE WAS PROPERLY ONE FOR JURY DETERMINATION.

This Court in *Martello v. Hawley*, 112 U.S. App. D.C. 129, 300 F.2d 721 (1962) which announced the rule of contribution among joint tort-feasors in the District of Columbia and the precursor to *Murray supra* states on p. 724, 300 F.2d:

"Accordingly, we now hold in the factual circumstances of this case that when settlement is made with one joint tort-feasor and later a verdict is obtained against the other, *and the jury finds that the settling tort-feasor should contribute*, then the verdict should be credited with one-half its total amount and the defendant tort-feasor should be required to pay only the remaining balance, namely, one-half the total original verdict." (Emphasis supplied)

And, more recently, in *Jones vs. Schramm*, Appeal No. 22, 102, decided March 5, 1970 this Court stated (slip opinion p. 3-4):

"And so where the contribution defendant is brought into the original action as a third-party defendant, he

is 'in the thick of the fray, and entitled to participate to the fullest extent,' and hence he 'is bound by the adjudication of the third-party plaintiff's liability to the original plaintiff. [citing case]

The same considerations apply concerning the issue of the liability to the plaintiff of the contribution defendant. It is a prerequisite of contribution that the contribution defendant must have been originally liable to plaintiff. [Citing *Murray, supra*] Modern jurisprudence dictates that as many different aspects of a single controversy be resolved in a single court litigation, to the extent feasible. *Where both alleged tortfeasors are joined as codefendants in an action brought by the victim, the liability to the victim of the second tortfeasor, from whom contribution is sought, is not properly assigned to the non-jury domain of the equity court as finder of fact. If the jury determines on the facts that the second alleged tortfeasor was not negligent, that codefendant has been authoritatively adjudged not a tortfeasor and is not liable in contribution.*" [Emphasis supplied]

### III. THE MURRAY RULE AS APPLIED TO THE FACTS HEREIN.

In *Murray*, Circuit Judge Leventhal speaking for the Court stated at page 1365, 405 F.2d:

"[11, 12] Any inequity residing in the denial of contribution against the employer is mitigated if not eliminated by our rule in *Martello v. Hawley*, 112 U.S. App. D.C. 129, 300 F.2d 721 (1962). *Martello* holds that where one joint tortfeasor causing injury compromises the claim, the other tort-feasor, though unable to obtain contribution because the settling tortfeasor had 'bought his peace,' is nonetheless protected by having his tort judgment reduced by one-half, on the theory that one-half of the claim was sold by the victim when he executed the settlement.



In our situation if the building owner is held liable the damages payable should be limited to one-half of the amount of damages sustained by plaintiff, assuming the facts would have entitled the owner to contribution from the employer if the statute had not interposed a bar. *A tortfeasor jointly responsible with an employer is not compelled to pay the total common law damages.* The common law recovery of the injured employee is thus reduced in consequence of the employee's compensation act, but that act gave him assurance of compensation even in the absence of fault." (Emphasis supplied)

On February 20, 1970, in the trial of the main action, the jury returned a verdict in favor of both plaintiffs against defendant Contractors Transport Corp. as follows:

For Plaintiff Russell Dawson	- \$100,000
"        "        Vada Dawson	- 10,000.

The verdict in favor of plaintiff Vada Dawson is, of course, unaffected by the *Murray* principle as the only employee involved subject to the provisions of the Workmen's Compensation Act<sup>2</sup> is the male plaintiff, Russell Dawson. In this respect the evidence disclosed that Dawson applied for and accepted compensation benefits totaling approximately \$23,000 for the injuries sustained. (J.A. 211). Hence, under *Murray* if negligence is shown on the part of Dawson's employer Singleton who could have been sued for common law damages except for the bar of the Workmen's Compensation Act, the judgment in favor of Dawson is subject to a 50 percent credit; and, of course, the negligence of the employer would bar the right of its

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<sup>2</sup>D. C. Code § 36-501 (1967) applies the Longshoremen's and Harbor Worker's Compensation Act [33 U.S.C. § 905 (1946)] to employees in the District of Columbia.

compensation insurance carrier to recoup its subrogated interest.<sup>3</sup> On the other hand, if the employer is not shown to be negligent then there is a compensation lien on the judgment as indicated below:

<u>With the Murray Credit</u>		<u>Without the Murray Credit</u>	
Amount of Judgment	- \$100,000	Amount of Judgment	- \$100,000
Less 50% Credit	- 50,000	Less Compensation	
	<u>\$ 50,000</u>	Lien	- 23,000
Plus Compensation		Net Recovery	\$ 77,000
Benefits	- 23,000		
Net Recovery	- \$ 73,000		

Practically speaking then, as regards Dawson, there is a net difference of only \$4,000 and the real question becomes whether the compensation carrier for Singleton on the evidence is entitled to recover its subrogated interest, namely, \$23,000. The answer to this question depends on whether the Singleton is shown to be a joint tortfeasor with Contractors Transport Corp.

**IV. THE JURY COULD HAVE FOUND THAT SINGLETON WAS A JOINT TORT FEASOR AND WOULD HAVE BEEN SUABLE FOR COMMON LAW DAMAGES EXCEPT FOR THE BAR OF THE WORKMEN'S COMPENSATION ACT.**

The evidence disclosed that Singleton entered into an agreement with Washington Gas Light Company on November 12, 1964 by the terms of which it agreed to purchase and install, among other things, refrigeration machines on the leased premises of the Watergate Project (J.A. 178) (page 1 of construction agreement - Exhibit No. 9). Among the other terms of its contract, Singleton agreed further that it would establish and maintain at the job site an adequate organization and staff to give proper job site *supervision* to

<sup>3</sup>33 U.S.C. 933.



the work (page 3 of contract). (J.A. 184) Singleton agreed further that it would keep on the job during the progress of the work a competent superintendent and that it "shall conduct its operation in a manner compatible with the Owner's Agent's safety regulations and employee practices pertaining to the locality of the work" (J.A. 188) (construction agreement - Exhibit 10 - page GC-4). Under the protection clause of the aforesaid agreement, it agreed to take all the necessary precautions for the safety of personnel as required by laws, codes and applicable regulations. "This shall include without limitation the erection of necessary safeguards and posting of warning signs against hazards" GC-4. (J.A. 189)

Therefore, with respect to the B-4 level of this project Singleton became, in effect, the general contractor for Washington Gas Light Company and it in turn hired Contractors to assist it in the completion of a part of its contract, i.e., the installation of the three chillers. The evidence disclosed clearly that this was a joint operation; that both Singleton and Contractors' employees were jointly engaged in the moving and rigging operation. During the testimony of William Coakley, the foreman for Singleton, it was developed that Mr. Ward, the foreman for Constructors, worked under *his* (Mr. Coakley's) supervision. (J.A. 231). This supervision, of course, was required by the contract hereinbefore discussed. Hence, Coakley or someone acting in his place, was required to supervise and inspect the rigging to see that it complied with all the safety laws and regulations. This was not done. (J.A. 240)

In *Goss Printing Press Co. v. Mayhew*, 110 U.S. App. D.C. 393, 293 F.2d 870, (1961) the question before the Court was whether under a contract of sale Goss Printing Co. had an obligation to supervise the installation of handrails around the area of the printing press and see to it that they were properly installed or whether such supervision was limited to the operating machinery only. The plaintiffs were injured when they leaned against a handrail and it col-

lapsed. The installer of the rail, Centre-Ammon Company was clearly guilty of negligence but the Court in affirming the judgment below also found that Goss had undertaken in its contract to supervise the installation of the handrails and therefore, it was also negligent.

Singleton had a duty to place barricades around the area of the load line which it did not do. (J.A. 79, 80) It had a duty to warn its employee Dawson to keep away from the direction of the pull of the gateblock, which it did not do, as a result of which he was in the danger area and was injured. (J.A. 227, 189)

Furthermore, the jury could have found that the job involved a hazardous type of operation thereby creating a non-delegable duty in Singleton to see that the necessary precautions were taken to prevent injury to others including its employees. *Watford vs. Evening Star Newspaper Company*, 93 U.S. App. D.C. 260, 211 F.2d 31, 35-36 (1954); 41 *Am Jur* 2d § 40 p. 802. Again, the jury could well have found that Singleton failed to provide its employee with a reasonably safe place to work as required by the Code.<sup>4</sup>

Nor should Contractors assertion that it was erroneously denied a jury trial be defeated by the argument that there was no evidence of negligence on the part of Singleton and therefore a directed verdict would have been rendered making the issue moot. The record belies this contention but, again, the same point was urged in *Rodenbur vs. Kaufmann*, 115 U.S. App. D.C. 360, 320 F.2d 679 (1963) in which one of the issues on appeal was whether the lower court was correct in striking the jury demand in plaintiff's complaint based upon an alleged agreement plaintiff had in a lease with the appellee landlord. The Court stated at p. 683, 320 F.2d:

"But under the long established rule governing the direction of a verdict, the appellant must be accorded

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<sup>4</sup>§ 36 D.C. Code 438(a) 1967 Ed.

every favorable intendment fairly to be derived from the evidence and legitimate inferences reasonably to be deduced therefrom (citing cases). Thus, tested in the light of the applicable law as discussed, and because of the mentioned deficiencies in the findings [of facts] \* \* \* the record does not justify our saying that judgment for the appellee was correctly entered.

\* \* \* \*

We have not had occasion to consider the extent to which a contract [citing cases] to waive so important a right should be given effect. [citing cases] Courts will 'indulge every reasonable presumption against waiver' [citing cases] of a jury trial"

### CONCLUSION

As heretofore stated, the judgment in favor of Vada Dawson has been paid and satisfied and one-half the judgment in favor of Dawson has been satisfied harmoniously with *Murray* and *Martello*.

Therefore, it is submitted that as Contractors was entitled to a jury trial on the factual issue framed in its cross-claim against Singleton and the Court below denied this right and, furthermore as the testimony below clearly shows that a jury could have found negligence on the part of Singleton, the judgment of the Court below on the cross-claim against Singleton should be reversed and remanded for a new trial, limited only, however, to the issue of Singleton's negligence. Should the jury find Singleton to be without fault, the verdict will stand and the compensation carrier will be reimbursed the sums paid to Dawson. On the other hand, if the jury should find that Singleton was negligent, then the Court should enter the

credit in accordance with the holding in *Murray* which would thereby defeat the subrogation rights of Singleton's compensation carrier and Dawson would accordingly retain the aforementioned benefits paid.

Respectfully submitted,

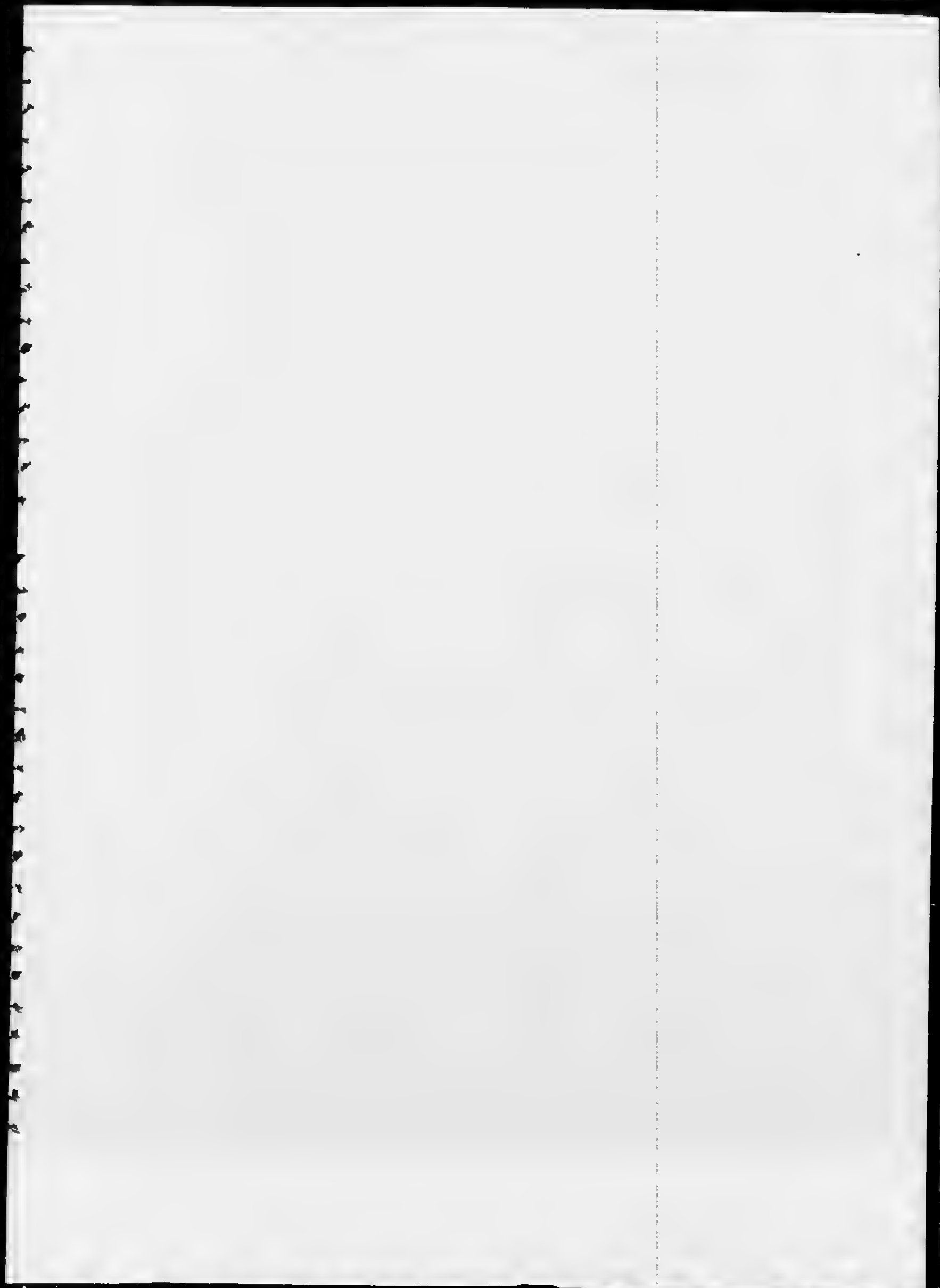
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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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RUSSELL L. DAWSON,

*Appellee,*

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CONTRACTORS TRANSPORT CORPORATION,

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v.

WILLIAM H. SINGLETON COMPANY,

*Appellee.*

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals  
for the District of Columbia Circuit

APPELLEE, RUSSELL L. DAWSON'S, BRIEF

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---

APPELLEE, RUSSELL L. DAWSON'S, BRIEF

---

COUNTER STATEMENT OF ISSUES PRESENTED  
FOR REVIEW\*

Appellee states that the only issue involved in this appeal is whether there was substantial evidence to support the Findings of Fact, Conclusions of Law and the Judgment of the court below dismissing appellant's Cross-Claim against appellee, William H. Singleton Company.

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\*This case has not been previously before this Court

## COUNTER STATEMENT OF THE CASE

Appellee, Russell L. Dawson (hereinafter referred to as Dawson) joined in by his wife, Vada Dawson, filed a Complaint against the rigging contractor appellant, Contractors Transport Corporation,<sup>1</sup> and Magazine Bros. Construction Corp. seeking damages for permanent personal injuries for Dawson in the sum of \$600,000 and damages for loss of services, society, love, affection and consortium on behalf of Mrs. Dawson in the sum of \$100,000. (App. 8)<sup>2</sup> The court below directed a verdict in favor of Magazine Bros. Construction Corp. and no appeal has been taken from the judgment on the directed verdict. The Complaint alleged Dawson, while working at the Watergate Project as a steam-fitter and business invitee, was violently struck and permanently injured by a defective cable and other flying debris, caused by appellant's negligent installation and operation of rigging equipment in its moving and installing of heavy equipment, namely, a 44 ton Chiller, at the Watergate Project. The Complaint alleged that the negligent installation and operation of the equipment involved in moving this heavy chiller of appellant the rigging contractor caused a cable to suddenly break with great force and violence. As a result a cable snapping like a bow string severed a four by four stake on appellant's truck, which stake was hurled through the air, struck Dawson and caused him painful and permanent injuries. The injuries alleged and proven at the trial included fractures and contusions about the body, compound fracture of the right arm and elbow and permanent loss of function of his right arm, shoulder and elbow, injuries to the cervical region of the neck, including hypalgesia and hypesthesia, injuries to the back and the nervous system, including nerve root injuries, all of which required extensive hospitalization and a series of operations. These injuries were still under treatment at the time of trial and

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<sup>1</sup> Sometimes hereinafter referred to as Contractors.

<sup>2</sup> App. refers to Appellant's Appendix.

would require further medical care, hospitalization and nursing in the future for the remainder of Dawson's life. These injuries permanently disabled Dawson from performing his occupation as a steamfitter, caused loss of earnings in the past and loss of earnings for the remainder of his natural life (App. 9-11).

Defendant, Magazine Bros. Construction Corp.,<sup>3</sup> filed several Amended Third Party Complaints alleging that the third party defendant, appellee, William H. Singleton Company, (hereinafter referred to as Singleton), was negligent or contributorily negligent (App. 13-26).

Appellant filed a Cross-Claim against the third party defendant Singleton alleging that its negligence caused the accident and except for the bar of the Workmen's Compensation Act, Singleton would be liable for damages to Dawson and prayed for a fifty percent contribution (App. 27). Appellant did not demand a jury trial on the Cross-Claim against Singleton (App. 27).

In discussions in chambers prior to trial, at the opening of the trial and during the trial, counsel for Dawson, appellant and Singleton all agreed that the Cross-Claim of appellant against Singleton would be tried and decided by the Court after the return of the jury's verdict (App. 46, 49, 50, 212, 258-261).

Thus, after all the evidence had been submitted and the court was discussing proposed instructions to the jury, counsel for appellant made a motion for a directed verdict on the Cross-Claim. Counsel for Singleton pointed out that the agreement among the parties was that the Cross-Claim would "be heard by the Court following the jury's verdict; therefore a motion of this type would be inappropriate." After discussions between the court and the three remaining counsel, the court agreed, stating that the ultimate question of negligence against Singleton, and any contribution, if any, were to be decided by the court after the jury's

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<sup>3</sup> Hereinafter referred to as Magazine.

verdict, with the right in counsel for appellant to argue to the jury that the accident was not caused by any fault of appellant and that Singleton's fault caused the accident. (App. 258-261) The court obtained the agreement of the three counsel remaining that the court would decide whether there was any negligence of Singleton. If so, the Court would decide whether that negligence contributed to the accident and how much it would reduce the verdict, which were the issues involved in the Cross-Claim and that this was the "very purpose of taking the Cross-Claim away from the jury" pursuant to the understanding with counsel. This is clear from the record, which reads as follows (App. 258-261):

MR. MAHONEY: Your Honor, I think I mentioned to Your Honor before that I had a matter to take up at the conclusion of the evidence which is on the cross claim. I would like to make a motion now for a directed verdict on the cross claim.

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MR. GREGG: If I may say this before we get involved in this, and I told this to Mr. Mahoney, I was under the impression the cross claims between defendants were to be heard by the Court following the jury verdict; therefore, a motion of this type would be inappropriate.

THE COURT: That is what I thought.

MR. MAHONEY: I thought at the beginning of the case we were to submit the question of negligence to the jury and then Your Honor would—

THE COURT: —submit the question of negligence against whom?

MR. MAHONEY: Against Singleton.

THE COURT: That wasn't my understanding. I thought I was to decide the whole thing—negligence any contribution, if anything. Wasn't that your understanding?

MR. GREGG: Yes, sir.

MR. MAHONEY: I was referring to the Martello v. Hawley case which was the case relied on by Murray.

If the jury finds the settling tort feisor is negligent then the judgment is credited by fifty percent. So Murray took that rational.

THE COURT: That was not my understanding.

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THE COURT: That is not the question for the Court. The question is what was the understanding when we first started out? My impression was I would decide the question of negligence and everything after the jury verdict in this case, whether or not there is any evidence against Singleton, and if so whether it contributed to this accident. Then I'd decide how much to reduce the verdict by if it is in favor of the plaintiff, of course, or anything connected with that cross claim. That was the very purpose of taking it away from the jury.

MR. MAGEE: Cross claim, Your Honor, but not contributory negligence.

THE COURT: Counsel for the defendant can argue it wasn't our fault, it was Singleton's fault.

MR. MAGEE: Yes, Sir; and I understood Your Honor would rule as a matter of law what these facts—

THE COURT: Not at this time.

MR. MAGEE: No, no, after the jury verdict.

THE COURT: My understanding is I would take care of it after the jury verdict.

MR. MAGEE: That is the way I understood it.

THE COURT: *That's the way I understood it, the three of us understand it, and we will wait till the jury verdict and find out what it is.* (Emphasis added)

Appellants' counsel made no further contention that the agreement was not as stated by the court (App. 261) involving all three counsel, that the appellant's Cross-Claim against Singleton would be decided by the court after the jury's verdict.

Appellant's counsel, pursuant to the understanding of all the parties, argued that Singleton was responsible for the

bringing in of the machine and its installation and was responsible for the accident and that its negligence caused the accident (Supp. Tr. of Feb. 17, 1970, pp. 1-3). Appellant argued that Singleton was negligent because under the Union Regulations involved the riggers (appellant bring in the chillers, put them down and then the steamfitters take over and put the equipment in its final resting place (Supp. Tr. p. 3). Appellant's counsel argued that employees of appellant only assisted Singleton in putting the chiller in place and that Singleton had "nothing" to do with the rigging and all of the rigging was done by employees of Singleton (Supp. Tr. p. 6) and stated that the question was whether Contractor's employees did or did not cause the accident. Appellant's counsel argued that Singleton's foreman ordered Dawson into the rigging area and had the responsibility and duty to warn him, and that both Singleton's employees and Dawson were negligent (Supp. Tr. p. 11). Appellant's counsel's final argument was that Singleton's men and steamfitters put up the rigging involved and put on the choker which snapped, thus arguing that the negligence of Singleton, including its employee, Dawson, caused the accident or contributed to cause the accident (Supp. Tr. p. 12).

The jury found that neither Dawson's negligence nor Singleton's negligence either caused or contributed to cause the accident in which Dawson suffered permanently disabling injuries. The jury returned a verdict in favor of Dawson for \$100,000 and a verdict for his wife for \$10,000 (App. 219). Appellant does not question the court's instructions to the jury, the jury's findings or the amounts of these verdicts. In fact, appellant admits that it paid Mrs. Dawson's \$10,000 verdict in full and has paid one-half of the judgment of Dawson, that is, \$50,000 on account of the judgment (App. 262—Appellant's Brief p. 3).

After the return of the jury's verdict, pursuant to the understanding of the parties, the court requested all counsel to submit their arguments in writing in regard to the

contentions of the parties under the Cross-Claim of appellant against Singleton. The court considered the various contentions of the parties concerning the Cross-Claim, which had been reserved by agreement of all parties for determination by the court after the jury's verdict and entered its Findings of Fact and Conclusions of Law, found against appellant's Cross-Claim and denied that claim (App. 45, 46-46F).

Under these circumstances, we submit that the only issue before this Court is whether there was any substantial evidence to support the court's denial of appellant's Cross-Claim. The evidence supports the Findings of Fact and Conclusions of Law of the trial court and that court properly denied appellant's Cross-Claim.

#### STATEMENT OF THE FACTS

The following facts were stipulated by the parties (App. 29-30):

On December 15, 1964 the plaintiff, Russell L. Dawson was working in premises at or near 600 New Hampshire Ave., N.W., Washington, D.C., known as the Watergate Project, which was then under construction.

On said date defendant, Magazine Bros. Construction Corp. (Magazine Bros.) was a corporation doing business in the District of Columbia and Contractors Transport Corp. was a corporation with offices in Arlington, Va. and doing business in the District of Columbia.

On or about December 12, 1964 Contractors Transport delivered three Carrier Model 16H100 automatic refrigeration machines with accessories to the job site and there lowered these machines through an air shaft to the machinery room in the basement.

Third-party Defendant William H. Singleton Co. (Singleton) entered into a written contract sometime



in November 1964 with defendant-third-party plaintiff Magazine to provide and install the plumbing, heating, ventilating, air conditioning and sprinkler work for the Watergate Project.

Third-party Defendant Limback Company (Limback) subsequently merged with or into Singleton and Singleton is now a division of Limbach.

Magazine was the general contractor on the project.

We adopt as the facts controlling the merits of appellant's Cross-Claim against Singleton the Findings of Fact of the trial court and the Conclusions of Law based upon these findings which were as follows (App. 46-46F):

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
CONCERNING THE CROSS CLAIM OF THE DEFENDANT  
AND THIRD PARTY PLAINTIFF, CONTRACTORS  
TRANSPORT CORP., AGAINST THE THIRD PARTY  
DEFENDANT, WILLIAM H. SINGLETON CO.**

The above-entitled civil action came on for a hearing before the Court and a jury on the Complaint of the plaintiffs for damages arising out of the personal injuries sustained by the male plaintiff in an accident which occurred at the Watergate Project in Washington, D.C. on December 15, 1964. The Complaint alleged that the defendants, Magazine Bros. Construction Corporation (hereinafter referred to as Magazine), a corporation, the general contractor, and Contractors Transport Corp. (hereinafter referred to as Contractors), a corporation, and a subcontractor, were negligent and that their negligence caused the accident which resulted in serious and permanent injuries to the male plaintiff. The female plaintiff, Vada Dawson, sued for damages for loss of services and consortium of her husband.

At the commencement of the trial and before the opening statement of counsel for plaintiffs and the introduction of any evidence, counsel for all parties agreed and stipulated in open Court that the Third

Party Complaint filed by Magazine against the third party defendant, William H. Singleton Co. (hereinafter referred to as Singleton) and the Cross Claim of the defendant and third party plaintiff Contractors against Singleton would be decided by the Court without a jury after the conclusion of all the evidence and the return of the verdicts of the jury involving the plaintiffs' claims against the defendant, Magazine and Contractors.

At the conclusion of the plaintiffs' evidence, Magazine moved for a directed verdict on the ground that the plaintiffs had failed to establish by a preponderance of the evidence any negligence of Magazine which contributed to proximately cause the accident, and the Court granted that Motion and directed a verdict of the jury in favor of defendant Magazine on the grounds that the evidence fails to establish that the alleged negligence of defendant Magazine, such as negligence in supervision, in furnishing construction lighting and in furnishing barricades did not contribute to proximately cause the accident of which the plaintiffs complain.

The trial continued before the jury on the plaintiffs' claims against the defendant Contractors. The issues of Contractors' negligence, contributory negligence on the part of the male plaintiff as an employee of Singleton working at the Watergate Project at the time of the accident and the question of whether the sole negligence of the male plaintiff and his employer Singleton proximately caused the accident were submitted to the jury and argued by counsel for the respective parties.

The jury returned a verdict in favor of the male plaintiff in the sum of \$100,000, and a verdict in favor of the female plaintiff in the sum of \$10,000.

Counsel for all parties have submitted their contentions and arguments by way of written Memoranda to the Court, after the return of the jury's verdicts and the entry of judgments thereon by the Court.

Upon consideration of the pleadings, the evidence adduced at the trial, the arguments of counsel and the Memoranda filed with the Court by all counsel, the Court nunc pro tunc as of the 5th day of May, 1970 makes the following

#### FINDINGS OF FACT

1. On December 15, 1964 plaintiff, Russell L. Dawson, was a business invitee working in premises known as the Watergate Project, then under construction by the defendant Magazine; Contractors and Singleton were sub-contractors on this project.

2. Contractors was a rigging and hauling corporation, experienced in the moving and installation of heavy machinery and equipment in construction projects in the District of Columbia and elsewhere.

3. On December 15, 1964 the male plaintiff was working at said project as a steamfitter, in the employ of Singleton.

4. Contractors, by a work order dated November 13, 1964, with Singleton, had contracted to receive, unload, store as necessary and deliver to job site and rig into place when directed by Singleton three Carrier Model Refrigeration Machines with accessories,<sup>4</sup> each machine having the capacity of forty-four (44) tons of chilling and each weighed 95,000 pounds (Plaintiffs' Exhibit 5).

5. Prior to December 15, 1964 Contractors received, unloaded, stored and delivered to the job site and rigged into place two of the three Carrier Model Refrigeration Machines.

6. The rigging used to move and install these chillers, including the winch truck involved, the rollers, cables, blocks, tackles and tools were the property of Contractors and had been brought to the job site by Contractors.

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<sup>4</sup>This "work order" is printed in Appellant's Appendix, at p. 43, there designated as "Exhibit A".

7. On the morning of December 15, 1964 Contractors, acting through two of its employees, commenced to rig into place the third Refrigeration Chiller. Employees of Contractors set up the rigging arrangement, furnished the rollers to be used under the chiller and rigged the chiller, utilizing block and tackle systems to the winch truck. In performing the rigging pursuant to their contract, Contractors negligently used cables which were defective, that is, cables with broken lays, attached a choker over the metal edge of the truck to a bar on the side of the truck without bagging or insulation and connected several thimbles in reverse order, thereby reducing the efficiency of the entire rigging mechanism.

8. Contractors' employees started the winch for the purpose of moving the chiller over the rollers which had been placed under the chiller on the morning of December 15, 1964. The rollers under the chiller jammed, placing the dead weight of the chiller, being 95,000 pounds, on the rigging. Contractors' foreman signaled Contractors' other employee who stopped the winch truck. Contractors' foreman requested the male plaintiff to get a sledge hammer from the winch truck to be used to break loose the jammed rollers under the chiller. While the male plaintiff was in the area of the winch truck and before the rollers had been corrected for rolling purposes, Contractors' foreman signaled to another employee of Contractors, the winch operator, and the winch was started. This negligent operation of the winch and the rigging caused the choker which passed over the metal edge of the truck without any bagging or insulating material between the cable and the edge of the truck, to be severed. This severance caused the main cable line to snap like a bow string, severing from the truck a wooden standard, the top portion of which was hurled through the air striking and injuring the male plaintiff.

9. In force and effect at the time of the accident were Safety Standards, Rules and Regulations of the Minimum Wage and Industrial Safety Board of the District of Columbia, adopted pursuant to law, which covered Contractors' operation at the time of the accident, including Regulation 11-21108,<sup>5</sup> and required cables limited to allowable safe loads and required that all cables when brought over a sharp corner or hard material liable to cut or cause undue abrasion shall be protected by use of bagging or other protective padding (Plaintiffs' Exhibit 3). Contractors' rigging operations were not performed pursuant to said Regulations, violated those Regulations and constituted negligence on the part of Contractors.

10. The negligent manner of rigging and operation of the rigging by Contractors caused the accident of December 15, 1964, in which the male plaintiff was injured. The male plaintiff, Russell L. Dawson, was not guilty of any negligence which contributed to cause the accident of December 15, 1964 and was not engaged in any way in operating the rigging equipment at the time of the accident.

11. No activities of the employees of Singleton contributed to cause the accident of December 15, 1964. As a result of the accident of December 15, 1964, caused by the negligence of Contractors, the male plaintiff suffered severe and permanent injuries, which disabled him from continuing his employment in his trade as a heavy steamfitter. The injuries of the male plaintiff were proximately caused by the negligence of Contractors.

From the aforesaid Findings of Fact the Court makes the following

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<sup>5</sup>The applicable portions of Plf. Ex. 3, Reg. 11-21108 are printed in the Appendix (p. 1) at the end of this brief.

### CONCLUSIONS OF LAW

1. The accident which caused the injuries and damages to the plaintiffs was caused by the sole negligence of Contractors.
2. The male plaintiff was not guilty of any contributory negligence.
3. No employees of Singleton were guilty of any negligence which contributed to proximately cause the accident of December 15, 1964.
4. Singleton is in no sense a joint tortfeasor with Contractors.
5. The Cross-Claim of Contractors against Singleton should be denied.

Based upon the aforesaid Findings of Fact and Conclusions of Law, this Court entered its Order and Final Judgment dated the 5th day of May, 1970, denying Contractors' Cross-Claim against Singleton.

The trial court, therefore, properly entered its Judgment denying appellant's Cross-Claim (App. 46F, 45).

### STATUTE AND REGULATION INVOLVED

At the time of the accident the following Statute was in force in the District of Columbia reading in applicable parts as follows (Title 36, District of Columbia Code):

Sec. 36-433. Additional duties of Board under this chapter.

The Board, in addition to its duties defined in sub-chapter I shall administer the provisions of this sub-chapter and shall have power to make such inspections and investigations as it may deem necessary; collect and compile statistical information; require employers to keep their places of employment reasonably safe; require employers to keep such records as it may deem advisable and to furnish the Board with complete, detailed reports relative to all

accidents; determine and fix reasonable standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment; promulgate general rules and regulations based upon such standards and fix the minimum safety requirements which shall be complied with by employers within the purview of this sub-chapter.

\* \* \* \* \*

Sec. 36-438. Employers' duties—Furnish safe place of employment—Furnish required information—Report employees' injury, death, or disease—Record of employees.

(a) Every employer shall furnish a place of employment which shall be reasonably safe for employees, shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably safe and adequate to render such employment and place of employment reasonably safe.

The following Regulation adopted by the Board governing rigging operations like that of Contractors reads in applicable part as follows (Regulation 11-21108—Pl. Ex. 3, p. 83):

\* \* \* \* \*

(c) Use, care and maintenance.

(3) Where any\*\*\*cable supporting any scaffold, structure, or equipment is brought over a sharp corner of hard material liable to cut or cause undue abrasion, the rope or cable shall be protected by the use of bagging, wooden blocks, or other protective padding.

(This is the section Contractors violated as found by Inspector Wiseman and the court below; Accident Investigation Report of the Board dated December 15, 1964, Pl. Ex. 10, pars. 12, 13, 14 and 15, and Diagram of Accident, Pl. Ex. 53, both printed in the Appendix at the end of this Brief at p. 1 et seq.).



### SUMMARY OF ARGUMENT

A fair reading of the record discloses that the counsel for the three parties involved, appellant, Dawson and Singleton, all agreed that appellant's Cross-Claim against Singleton would not be submitted to the jury and would be decided by the court after the return of the jury's verdicts on the Dawson claims against appellant. The court permitted the jury to consider, and appellant's counsel to argue, Dawson's negligence and/or Singleton's negligence caused or contributed to cause the accident. The jury's verdict found against appellant on the issues of Dawson's and/or Singleton's negligence and in fact found that the accident in which Dawson was permanently injured and disabled was proximately caused, under proper instructions of the court, by the sole negligence of appellant in rigging and moving the forty-four ton chiller into place in the Watergate Project. The court found as a fact that counsel for all three parties involved on this appeal had agreed that the court decide appellant's Cross-Claim against Singleton after the jury's verdict. The court, pursuant to this agreement among the parties, entered Findings of Fact and Conclusions of Law establishing (App. 46F):

1. The accident which caused the injuries and damages to the plaintiffs was caused by the sole negligence of Contractors.
2. The male plaintiff was not guilty of any contributory negligence.
3. No employees of Singleton were guilty of any negligence which contributed to proximately cause the accident of December 15, 1964.
4. Singleton is in no sense a joint tortfeasor with Contractors.
5. The Cross-Claim of Contractors against Singleton should be denied.

Based upon the aforesaid Findings of Fact and Conclusions of Law, the court entered its Order and



Final Judgment dated the 5th day of May, 1970, properly denying Contractors' Cross-Claim (App. 45).

The evidence supports the Findings of Fact of the court and as Singleton was not guilty of any negligence which contributed to cause the accident and was in no sense a joint tortfeasor, appellant's Cross-Claim was properly denied and contribution by Singleton disallowed.

## ARGUMENT

### I.

**THE COURT BELOW DID NOT ERR REGARDING THE ISSUE OF SINGLETON'S NEGLIGENCE AND PERMITTED APPELLANT TO ARGUE TO THE JURY SINGLETON'S NEGLIGENCE CAUSED OR CONTRIBUTED TO CAUSE THE ACCIDENT**

Appellant's argument that the court erred in withdrawing the issue of Singleton's negligence from the jury is without merit. Appellant agreed in chambers, during the trial and during the discussion of the instructions of the jury with the court's "understanding" that the court would decide appellant's Cross-Claim after the jury's verdict, but would permit appellant's counsel to argue as a defense Dawson's contributory negligence and Singleton's negligence to the jury (App. 6-7). Following this understanding, the court, after the jury's verdict, instructed counsel to submit their arguments on appellant's Cross-Claim against Singleton to the court in writing. This was done (App. 5). The finding of the court concerning the understanding between court and all counsel is supported by the record, the proceedings conducted pursuant thereto and is as follows (App. 46-46B):

At the commencement of the trial and before the opening statement of counsel for the plaintiffs and the introduction of any evidence, counsel for all parties agreed and stipulated in open Court that the Third Party Complaint filed by Magazine against the third party defendant, William H. Singleton Co. (hereinafter referred to as Singleton) and the Cross-Claim of the defendant and third party plaintiff Contractors against Singleton would be decided by the Court without a jury after the conclusion of all the evidence and the return of the verdicts of the jury involving the plaintiffs' claims against the defendants, Magazine and Contractors.

At the conclusion of the plaintiffs' evidence, Magazine moved for a directed verdict on the ground that the plaintiffs had failed to establish by a preponderance of the evidence any negligence of Magazine which contributed to proximately cause the accident, and the Court granted that Motion and directed a verdict of the jury in favor of defendant Magazine on the grounds that the evidence fails to establish that the alleged negligence of defendant Magazine, such as negligence in supervision, in furnishing construction lighting and in furnishing barricades did not contribute to proximately cause the accident of which the plaintiffs complain.

The trial continued before the jury on the plaintiffs' claims against the defendant Contractors. The issues of Contractors' negligence, contributory negligence on the part of the male plaintiff as an employee of Singleton working at the Watergate Project at the time of the accident and the question of whether the sole negligence of the male plaintiff and his employer Singleton proximately caused the accident were submitted to the jury and argued by counsel for the respective parties.

The jury returned a verdict in favor of the male plaintiff in the sum of \$100,000.00, and a verdict

in favor of the female plaintiff in the sum of \$10,000.00.

Counsel for all parties have submitted their contentions and arguments by way of written Memoranda to the Court, after the return of the jury's verdicts and the entry of judgments thereon by the Court.

Pursuant to this agreement and understanding, the court entered its Findings of Fact and Conclusions of Law, as we have pointed out earlier in this Brief, and properly denied appellant's Cross-Claim against Singleton.

We will briefly review the evidence supporting the Findings of Fact of the court on the Cross-Claim.

Safety Inspector, John Robert Wiseman, of the District of Columbia, an expert in rigging, handling of cables, pulleys, blocks, rope and the movement of heavy machinery or equipment in connection with the construction of building projects, like the Watergate Project, inspected and made an investigation of the accident in which Dawson was permanently injured. His testimony, the Code of Safe Regulations in the District of Columbia (Plf's. Ex. 3), drawings of the chiller (Plf's. Exs. 4 and 5), exhibits showing types of cables, pulleys, gate blocks and other equipment involved (Plf's. Exs. 6, 7, 8 and 9), and his official report of the accident (Plf. Ex. 10)<sup>6</sup> established that appellant owned the equipment involved, rigged the equipment negligently, negligently operated the equipment and caused the accident when a choker line was severed which passed over a sharp, unpadded edge of appellant's winch truck (App. 51-96). Wiseman's testimony further established that Contractors' rigging and operating of its equipment violated the Safety Regulations of the District of Columbia (Plf. Ex. 10) governing such construction procedures. As a result of Con-

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<sup>6</sup>Plf. Ex. 10 is printed in the Appendix (p. 1) at the end of this brief.

tractors' negligence, the cable in appellant's sling choker affixed to adjust and straighten the main pulling defective cable broke, that cable snapped like a bow string and struck a wooden standard on appellant's winch truck, causing Dawson to be struck by the broken standard and injured. Wiseman's testimony established that the equipment was owned, rigged and operated by Contractors' employees and not by any employees of Singleton.

Dawson's testimony established he was a steamfitter working in the chiller area of the Watergate Project in the employ of Singleton. The chiller was jacked up and rollers were put under the chiller. Dawson at no time hooked up any part of the rigging attached to the winch. He saw no employees of Singleton do any rigging that morning. The rigging was done by employees of appellant, who also operated that rigging. Appellant's employees operated the cab, the winch and the pulley apparatus to pull the chiller. Appellant's rigging foreman asked Dawson to go the truck and get a sledge hammer because a roller had twisted under the chiller and had to be straightened out. As Dawson was walking away from the winch truck, he heard the crying of the cable and then he was struck on his right elbow and side and knocked violently to the ground. His recollection after the accident was not clear but he recalls being taken to the hospital. (App. 97-110)

Lee R. Ward, the foreman for appellant at the time of the accident, testified he assisted in the movement of the three chillers in the basement of the Watergate. After moving the chillers from appellant's yard to the job site, Ward, contrary to Dawson, first testified the rigging was done by "the steamfitters," on the two days of moving prior to the day of the accident, December 15th (App. 112-113). On the morning of December 15, Mr. Ward testified he was not sure who did the rigging (App. 115). Mr. Ward testified all the equipment involved was owned by Contractors, including the chokers (App. 131-132); that the winch truck

was equipped with wooden and not steel standards (App. 132) and that the chiller weighed fifty tons (App. 133). When his brother started the winch truck, it kicked (App. 133). He did not notice any bagging or cloth material under the particular choker on the winch truck (App. 134-135). The choker on the winch truck pulled the main line to the right (App. 135). He was giving the signals in operating the winch on the truck. When the operation started one of the six inch gum rollers under the chiller jammed (App. 137) and this stopped the operation (App. 137). Some one asked for a sledge hammer (App. 138). He could have made this request (App. 138). He and his brother were running all the equipment for the pulling of the chiller and watching the rigging (App. 139). The winch started up after it stopped the second time; pressure went to the load line, he heard a jerk or snap and saw the main line pulling off to the left and slack (App. 139). The choker broke and the gate block hit a man (App. 140). After the accident he found the broken choker. The cable as it snapped like a bow string sheared off a stanchion at its base on the winch truck and this wooden stake was hurled over and "struck Dawson" (App. 141). Ward finally admitted, after he first tightened the load line, it pulled to the left. When asked if he did not put the choker on the load line to straighten out the angle, he answered, "I don't remember" (App. 144). Ward testified his brother in a conversation at the time of the accident stated the line broke, or the cable, or the choker, whatever it was, broke, and went over and hit the standard, which in turn hit Dawson. The choker on the truck was broken (App. 147-148). The choker which broke went over the steel edge of the truck (App. 150). Ward identified the type of equipment being used on the job (Plf's. Exs. 50, 51 and 52). The broken standard which struck Dawson was two to three feet long. Later, in cross examination, Ward finally admitted that on December 15, when he first tried to move the chiller and start up the winch, he didn't get the right angle of the pull and had to change it in order to get the right

angle on the load. In order to get the right angle on the load line, he attached the choker on the truck, to get the line to pull the way he wanted it to (App. 160-161). He did not see any padding on the truck over its edge where the cable in the choker went over the edge of the truck (App. 161). The metal edge of the truck would cut the choker cable if enough load was placed on the cable (App. 162). His opinion was that the cable was a "bad cable" (App. 163). After the accident he looked at the cable, laid it down but does not know what happened to the broken cable thereafter, but he knew it belonged to Contractors (App. 163-164). He admitted talking to Inspector Wiseman and signing a written statement for him (App. 165). He finally remembered that some one went to get a hammer, a hammer was needed in connection with the jammed rollers, and the man who went to get the hammer got hurt (App. 166). Leonard Ward operated the winch and their employer was Contractors. Ward was supervising the rigging for his brother (App. 167). No warning was given by him to anyone in the area before the accident. If a cable started to scream, squeek or give off a noise, he would normally stop the cable question, but he does not remember any such events, but they could have occurred (App. 169). Ward also instructed steamfitters on the job (App. 170).

Ward's testimony and the testimony of his brother, the winch operator, clearly established they were operating the benefit on the morning of December 15th. Contractors owned the rigging and Ward finally admitted putting the bad or defective choker on the truck to straighten out the load defective choker on the truck to straighten out the load without putting any bagging or wood or insulation under the steel edge of the winch truck, which steel edge would cut such a choker cable under pressure (App. 160-164). This operation was negligent, violated the Safety Regulations introduced in evidence and was the proximate cause of the accident. This is why the jury found for the plaintiffs against Contractors and refused to find in favor of

Contractors on the defense interposed in the evidence and argued by counsel for Contractors that Dawson was guilty of contributory negligence which barred recovery, and that Singleton's negligence and not Contractors' negligence caused the accident.

Arthur Harris, a steamfitter employed by Singleton, who was working at the Watergate on December 15th, testified that the chillers were delivered on the job site not by Singleton but by Contractors (App. 244). Contractors were riggers. After the chillers were lowered into the basement area, Contractors winched the chillers into place with their truck (App. 245). The truck belonged to Contractors which also furnished the rollers, skates, jacks and rigging (App. 246). The riggers of Contractors handled all the rigging (App. 247). After the chiller was dropped into the basement area, the riggers of Contractors did all of the rigging. No employee of Singleton put up any of the wire and cable rigging (App. 248). Mr. Coakley of Singleton did not do any rigging nor did any other men working for Singleton (App. 248). He was present working in that area when the accident occurred on December 15th (App. 248-249). Three men were working for Contractors, doing the rigging (App. 249); a rigger of Contractors was operating the winch truck (App. 250); Dawson was working in the area (App. 250-251); Dawson had just passed him and the riggers told Dawson to go get a sledge hammer (App. 257). While they were working on the "skates" (rollers), the riggers started pulling the chiller (App. 252), things began to squeek, there was a crash and Dawson stumbled forward and fell (App. 252). Mr. Coakley and he went over to Dawson and found a piece of wood about two feet long, one end of which was broken. Dawson's head was lifted and put on a block of wood (App. 254). During the testimony the court informed the jury in order to put the case in proper perspective that Contractors was contending it as not negligent, in endeavoring to show that the steamfitters of Singleton and not the riggers did the rigging (App. 257). In keeping with this situation the Court advised counsel for appellant



that he could argue to the jury Singleton's negligence (App. 260).

The Court, after reviewing all of the evidence and receiving the jury's verdict, found the following to be the facts proximately causing the accident and Dawson's permanent injuries (App. 46C-46E):

9. Contractors' employees started the winch for the purpose of moving the chiller over the rollers which had been placed under the chiller on the morning of December 15, 1964. The rollers under the chiller jammed, placing the dead weight of the chiller, being 95,000 pounds, on the rigging. Contractors' foreman signaled Contractors' other employee who stopped the winch truck. Contractors' foreman requested the male plaintiff to get a sledge hammer from the winch truck to be used to break loose the jammed rollers under the chiller. While the male plaintiff was in the area of the winch truck and before the rollers had been corrected for rolling purposes, Contractors' foreman signaled to another employee of Contractors, the winch operator, and the winch was started. This negligent operation of the winch and the rigging caused the choker which passed over the metal edge of the truck, without any bagging or insulating material between the cable and the edge of the truck, to be severed. This severance caused the the main cable line to snap like a bow string, severing from the truck a wooden standard, the top portion of which was hurled through the air striking and injuring the male plaintiff.

10. In force and effect at the time of the accident were Safety Standards, Rules and Regulations of the Minimum Wage and Industrial Safety Board of the District of Columbia, adopted pursuant to law, which covered Contractors' operation at the time of the accident, including Regulation 11-21108, and required cables limited to allowable safe loads and required that all cables when brought over a sharp corner or hard material liable to cut or cause



undue abrasion shall be protected by use of bagging or other protective padding (Plaintiff's Exhibit 3). Contractors' rigging operations were not performed pursuant to said Regulations, violated those Regulations and constituted negligence on the part of Contractors.

11. The negligent manner of rigging and operation of the rigging by Contractors caused the accident of December 15, 1964, in which the male plaintiff was injured. The male plaintiff, Russell L. Dawson, was not guilty of any negligence which contributed to cause the accident of December 15, 1964 and was not engaged in any way in operating the rigging equipment at the time of the accident.

12. No activities of the employees of Singleton contributed to cause the accident of December 15, 1964. As a result of the accident of December 15, 1964, caused by the negligence of Contractors, the male plaintiff suffered severe and permanent injuries, which disabled him from continuing his employment in his trade as a heavy steamfitter. The injuries of the male plaintiff were proximately caused by the negligence of Contractors.

These findings of the court follow the jury's verdict. Hence, the court properly denied Contractors' Cross-Claim against Singleton for contribution.

Contractors makes no attack on the verdicts and judgments. Contractors' third party claim against Singleton is bottomed upon the theory that the third party defendant, Singleton, is a joint tortfeasor. Appellant cites *Murray v. United States*, 132 App. D.C. 91, 405 F.2d 1361 (1968) and *Martello v. Hawley*, 112 U.S. App. D.C. 129, 302 F. 2d 721 (1962). These cases are relied upon on the theory that if a third party defendant is a joint tortfeasor and that person's negligence contributed to cause the accident involved and is proven to be a tortfeasor, contribution will be allowed. *Murray* and *Martello* do not aid appellant because both the jury in effect and the court below have

found the third party defendant not be negligent and not to be a joint tortfeasor.

In *Jones v. Schramm*, \_\_\_ D.C. App. \_\_\_, \_\_\_ Fed.2d \_\_\_ (No. 22,102, decided March 5, 1970), this Court pointed out the doctrine of contribution originated in equity and "sounds in equity" (Slip Opinion, pp. 2-3). In *Jones* this Court pointed out where issues of negligence have been submitted to the jury, the trial court in determining whether contribution should be allowed between defendants stated that court should take no action which would counteract the jury's findings. In *Jones* this Court reversed the action of the trial court in reducing the verdict for the plaintiffs against Schramm alone from \$15,000 to \$7,500, notwithstanding this Court's decisions in *Murray* and *Martello*. The trial court had entered a judgment after the jury's verdict on a Cross-Claim for contribution. This Court held, if there was evidence to support the jury's conclusion, particularly in regard to another defendant's negligence,<sup>7</sup> the trial court should not enter a different finding, particularly on a Third Party Complaint for contribution (Slip Opinion, p. 6). The findings of the jury and of the court below that Singleton was not negligent and that Contractors' negligence caused the injuries, were supported by a preponderance of the evidence and should not be disturbed on this appeal.

In *Ciejek v. Crane Service Company, Inc.*, \_\_\_ App. D.C. \_\_\_, 351 F.2d 788 (1965), under a similar state of facts this Court held (p. 792):

A crane operator working under the closest possible direction and control of the general contractor has still a duty, in carrying out those directions, to operate his crane with an appropriate degree of care and skill; and his own employer will presumably be liable for any lapses in this regard which cause injuries.

---

<sup>7</sup> Singleton's negligence was before the jury and appellant was permitted to argue Singleton's negligence as a matter of defense. The jury's verdict in favor of plaintiff resolved this defense.

*Ciejek* placed the responsibility for injuries caused in the operation of the crane on the crane operators and riggers, as they were performing such work for their benefit. Where the negligent operation of a crane (a winch device involving rigging) causes an injury to an employee, even of the general contractor, who is providing supervision, the injured employee can recover against the crane operator for injuries caused by the negligence of the employees of the crane operator.

In *H. R. H. Construction Corp. v. Conroy*, \_\_\_ App. D. C. \_\_\_, 411 F.2d 722 (1969), this Court held where a contractor engaged in construction violates a safety regulation which is unexplained, that contractor is guilty of negligence as a matter of law and is liable in damages to an employee of another contractor who is injured on the job.

In *Washington-Sheraton Corporation v. Keeter*, 293 A.2d 620, 96 W.L.R. 561 (D.C. App. 1968), a Third Party Complaint had been filed by the defendant against the Peelle Company for indemnification or contribution. After the plaintiff prevailed the trial judge dismissed the Third Party Complaint for indemnification or contribution. The D.C. Court of Appeals upheld this dismissal of the Third Party Complaint and stated (p. 565):

The third party complaint alleged Peelle's negligence on the installation and maintenance of the escalator as a basis for its claim for indemnification or contribution in the event damages were assessed against appellant. At trial, however, appellant produced no direct evidence of specific acts of negligence, relying solely on *res ipsa loquitur*. While the control requirement has been weakened to the point where *res ipsa loquitur* may be invoked in a case where the instrumentality causing injury is controlled either by two defendants jointly or by a single defendant and a third party, the requirement has not been entirely eliminated. A party who is himself in control of the instrumentality may not rely on *res ipsa loquitur* against a party who shares that

control. One of the basic reasons for allowing an injured party to use the doctrine is that the defendant in control has greater access to the instrumentality causing the accident and is therefore in a better position to enlighten the trier of fact on the state of events surrounding the accident. *Powers v. Coates*, D.C. App., 203 A.2d 425, 426 (1964). Where appellant, as third party complainant, had equal access to the instrumentality, however, this reason is no longer applicable, for the doctrine is not available between concurrent tortfeasors, certainly not as a basis for indemnification or contribution.

In the instant case, in order for the jury to have found appellant negligent, it had to find that appellant at least shared control of the escalator with Peelle. Once it was established that appellant had control, separately or jointly, appellant could not depend on *res ipsa loquitur*. Since appellant produced no competent evidence of Peelle's specific negligence in proximately causing the accident, the trial judge properly dismissed the third party Complaint.

Here appellant failed to prove any specific or joint negligence of Singleton proximately contributing to cause the accident. The jury's verdict and the Findings of Fact of the court justified the denial of appellant's Third Party Cross-Claim for contribution.

## II.

### THE ISSUE OF SINGLETON'S NEGLIGENCE WAS SUBMITTED AND ARGUED TO THE JURY

Singleton's negligence was submitted to the jury. Appellant argued both Dawson's contributory negligence (as an employee of Singleton) and Singleton's negligence as defenses to Dawson's claims. (Supp. Tr. pp. 1-9) Thus, we submit the argument in this section of appellant's Brief is without merit. As pointed out in *Schramm*, as Singleton's negligence

was before the jury and was argued, the jury's verdict against Contractors bars any contribution from Singleton. The Findings of Fact and Conclusion of Law of the court which follow the jury's verdict, were supported by substantial evidence. Therefore, that court properly denied appellant's Cross-Claim for contribution. *Jones v. Schramm*, supra.

### III.

#### THE EVIDENCE, THE JURY'S VERDICT AND THE FINDINGS OF THE TRIAL COURT BAR THE APPLICATION OF THE MURRAY RULE HERE

As we pointed out, counsel for appellant agreed in chambers, agreed at the commencement of the trial and agreed again during the discussions of the instructions with the trial court that that court would decide appellant's Cross-Claim for contribution. One of the reasons for this agreement between the court and counsel for all the parties to this appeal is that to inject the Cross-Claim would not only be confusing but might open the door to bringing before the jury inadmissible and prejudicial evidence. The Cross-Claim is based upon the allegations therein that Dawson was injured in the course of his employment with Singleton, that Singleton was negligent and appellant is entitled to a judgment because of "the Workmen's Compensation Act." (App. 27) To submit this type of Cross-Claim to the jury might bring in evidence of the provisions of the Act, that Dawson received compensation and medical payments under that Act and, therefore, Contractors contended it was entitled to a reduction of Dawson's judgment. Evidence and testimony concerning the provisions of the Compensation Act and compensation payments are prejudicial and are not admissible before a jury in a third party claim for damages. Such evidence if heard by a jury requires reversal.

*Tipton v. Socony Mobile Oil Co.*, 373 U.S. 34, 84 S.Ct. 1 (1963);

*Eichel v. New York Central R. R. Co.*, 375 U.S. 253, 84 S.Ct. 316 (1963).

Actually the manner in which the case was handled below gave appellant two opportunities instead of one to have the issue of Singleton's alleged negligence determined. By agreeing, which appellant's counsel did, to the court deciding the Cross-Claim against Singleton for contribution, he obtained the right to present evidence of Singleton's negligence and to argue that negligence and the negligence of Dawson to the jury as defenses to Dawson's claims. When the jury decided these issues against appellant, under the agreement counsel for appellant had the second opportunity of arguing again to the court below under the Cross-Claim the issue of Singleton's negligence.

We submit the record is clear that appellant agreed to this agreement and that the finding of the court in regard to this agreement (App. 46-46A) is supported by the record. The court did nothing, as is argued in appellant's Brief, to bar the jury from considering Singleton's negligence, which the jury did. Appellant is not justified, after his two opportunities to establish Singleton's negligence below, first before the jury, and second before the court, to argue that the court "withdrew" (Br. p. 9) Singleton's negligence from the jury, or erred in entering Findings of Fact and Conclusions of Law (App. 46-46F) supporting the court's denial of appellant's Cross-Claim for contribution.

### CONCLUSION

We submit that while the jury could have found Singleton negligent, and this issue was submitted and argued by appellant to the jury, the jury in effect, found Dawson and Singleton not negligent, and found that the negligence of appellant was the sole and proximate cause of the accident which caused permant disabling injuries to Dawson. The Findings of Fact and Conclusions of Law are supported by a preponderance of the evidence. The court below properly dismissed the Cross-Claim of appellant against Singleton for

contribution because Singleton was not negligent, was not a joint tortfeasor and the sole negligence of the appellant was the proximate cause of the accident. Therefore, the judgment below (App. 4-5) denying the Cross-Claim of appellant for contribution should be affirmed.

Respectfully submitted,

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App. 1

APPENDIX



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
MINIMUM WAGE AND INDUSTRIAL SAFETY BOARD  
INDUSTRIAL SAFETY DIVISION



ACCIDENT INVESTIGATION  
REPORT

Date Assigned December 15, 1964  
To John E. Wiseman By \_\_\_\_\_  
Employer's IS-1 Report No. \_\_\_\_\_

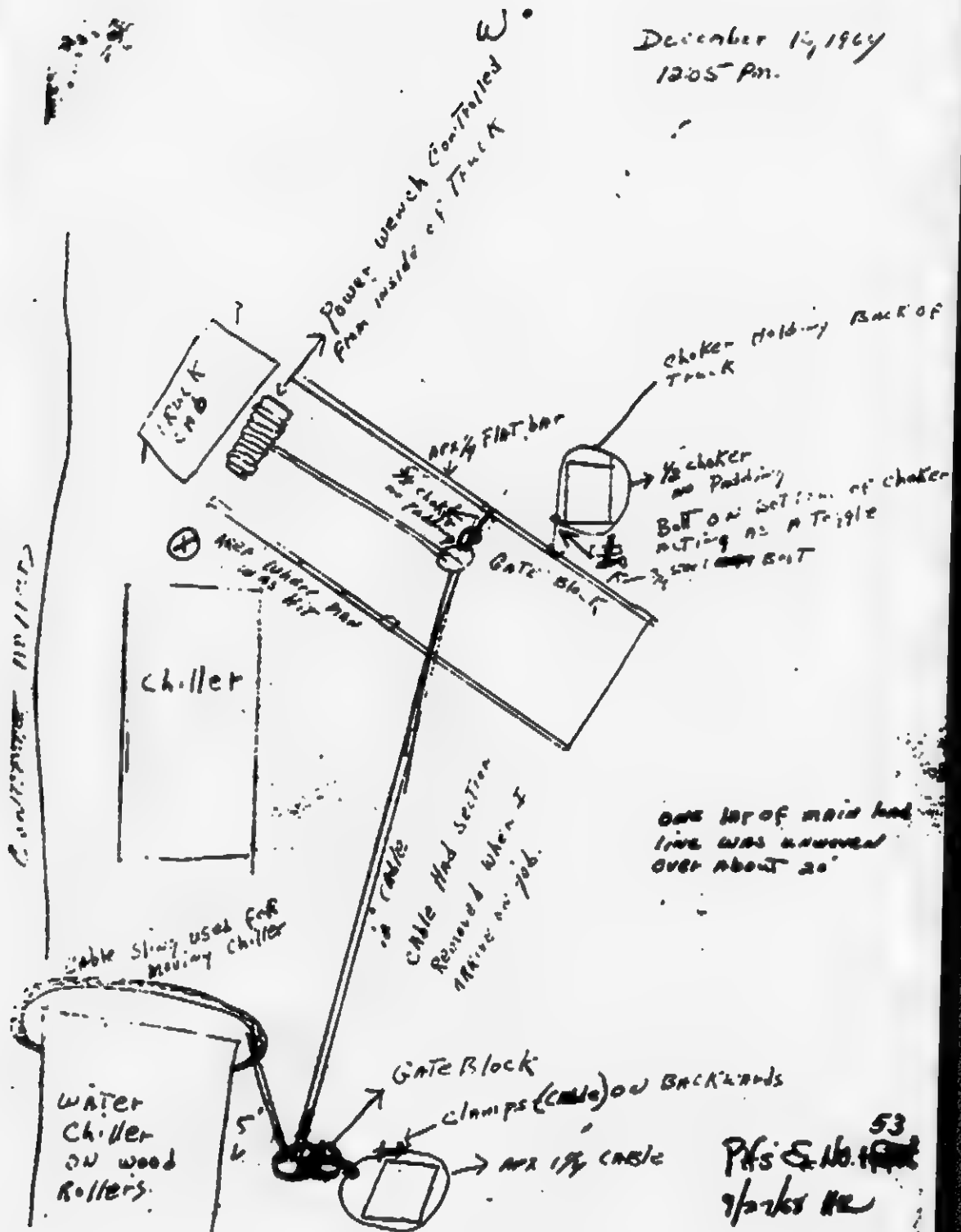
1. Employer William G. Longfellow
2. Address PO Box 152 Springfield Va.
3. Nature of business Mech. Contractors
4. Person injured Russell S. Dawson Age 39
5. Injured person's address #16 Potomac View Woodbridge Va.
6. Occupation when injured Pipe Fitter Regular occupation ☒  
Temporary occupation \_\_\_\_\_
7. Witnesses Edward L. Ward Address \_\_\_\_\_
8. When accident occurred Tuesday December 15, 1964 Time 7:15 P.M.
9. Where accident occurred 600 P.M. 9th Street NW
10. What happened Chicken holding gateblock broke causing  
load line to spring forward like a live wire  
striking employee
11. How it happened Chicken broke
12. Why it happened Load was too great the padding was  
used on sharp edges
13. Were D. C. safety regulations violated Yes Specify 11-21108 (C) (3)
14. In your opinion, who was responsible for violation(s) Rigging Contractor
15. Investigator's conclusions If the chicken had been protected  
by the use of lagging, wooden blocks, or other  
protective padding, accident might not have been
16. Investigator's recommendations Place experienced men on rigging  
and use padding where necessary.
17. Persons interviewed William E. Calverley Title Supt
18. Action taken by inspector to prevent recurrence of similar accident I instructed men  
to use padding and clean area of men when  
to move machinery
19. Action taken by management Same
20. Report prepared by John E. Wiseman Date submitted 11/15/64
21. Reviewed and approved by C-7-10

(Use other side, if necessary)

Pls. Ex. No. 4-11 Filed  
7/27/68 HK



December 14, 1964  
12:05 PM.





IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

No. 24,533

---

RUSSELL L. DAWSON,

Appellee,

v.

CONTRACTORS TRANSPORT CORPORATION,

Appellant,

v.

WILLIAM H. SINGLETON COMPANY

Appellee

---

Appeal From the United States District Court  
For the District of Columbia

---

BRIEF OF APPELLEE, WILLIAM H. SINGLETON COMPANY

United States Court of Appeals  
for the District of Columbia Circuit

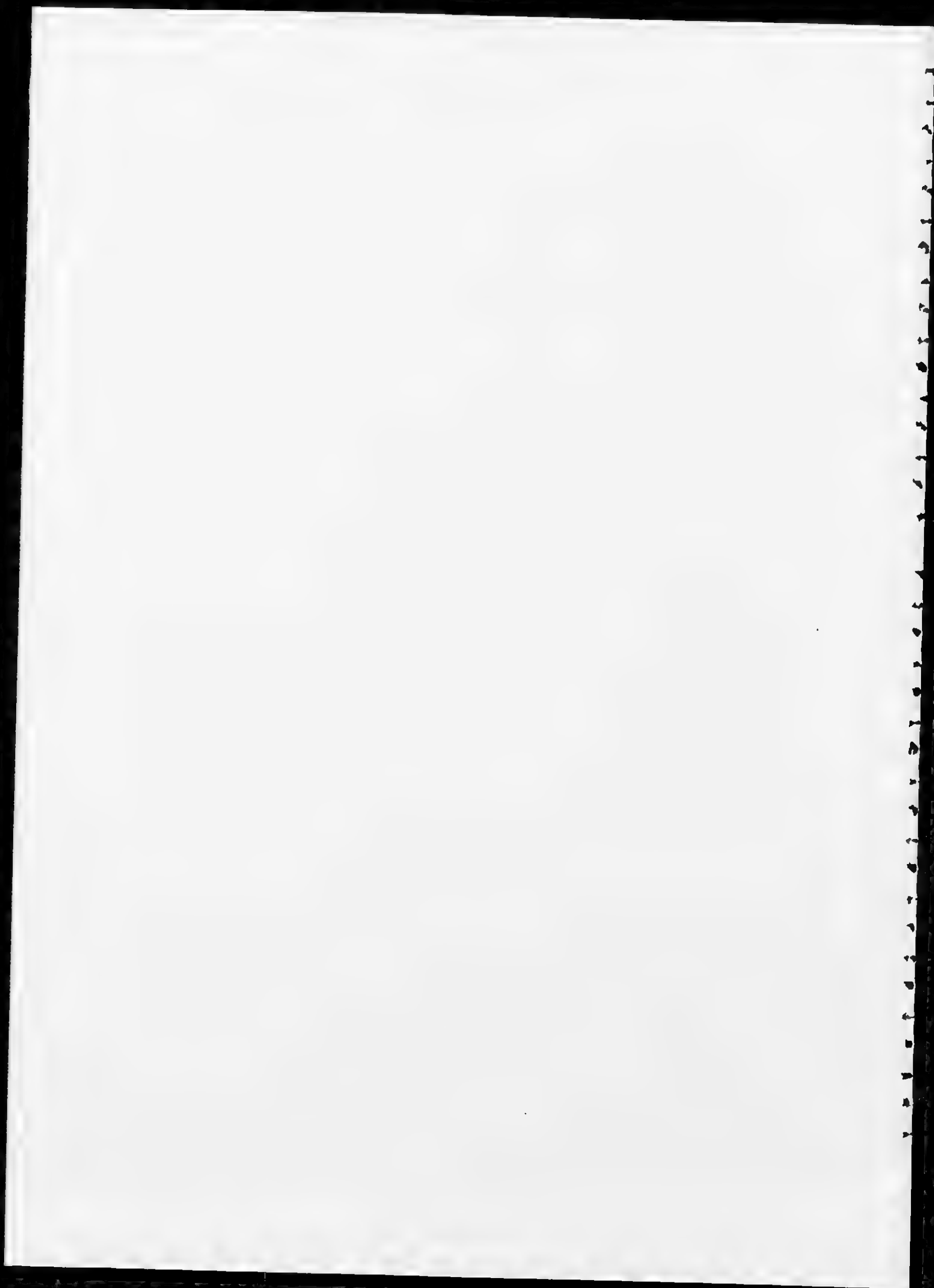
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Appellant,

v.

WILLIAM H. SINGLETON COMPANY,

Appellee

---

Appeal from the United States District Court  
For the District of Columbia

---

BRIEF OF APPELLEE, WILLIAM H. SINGLETON COMPANY

---

COUNTER-STATEMENT OF THE CASE

Appellant Contractors Transport Corporation was a rigging contractor that had agreed with William H. Singleton Company to "Receive, unload, store as necessary, and deliver

to job site, and rig into place when directed. . .", three large refrigeration machines referred to in the testimony as "chillers". This agreement in the form of a purchase order, was admitted into evidence as Plaintiff's Exhibit No. 2, and is included in the record at J.A. 43. In the course of moving one of the chillers into the place where it was to be permanently installed in a basement area of one of the Watergate buildings, a "choker" cable attached to a winch truck owned by appellant Contractors broke or was severed, causing the winch load line to snap or spring against a wooden upright standard or stake on the truck, breaking the stake, a piece of which was propelled through the air, striking the male plaintiff's arm and causing the injuries for which this action was brought. (J.A. 80, 92)

The truck and the winch were being operated by an employee of Contractors (J.A. 74), the rigging equipment including the choker was owned by Contractors, and there was evidence that the choker was attached by Contractors' foreman in such a way as to permit it to be cut by a sharp edge on the truck body (J.A. 75, 76, 77, 78).

While there were, of course, employees of plaintiff's employer, Singleton Company, on the job site, their activities and functions had to do with jacking up the chiller and placing rollers under it as it moved along (J.A. 104, 105, 108, 221, 247, 248).



Plaintiffs, husband and wife, initiated this litigation by filing an action against Contractors Transport Corporation and Magazine Brothers Construction Company. The latter company was allegedly the general contractor on the project and for reasons that are not particularly pertinent to the present posture of the case, a directed verdict was entered in favor of Magazine at the close of the evidence. No appeal has been taken with respect to that aspect of the case and no error is claimed in that regard.

Magazine had impleaded William H. Singleton Company (now a division of Limbach Company, J.A. 30), male plaintiff's employer, for indemnity or contribution (J.A. 15). Plaintiffs demanded a jury trial, as did Magazine in its third-party complaint. The case was at issue as to all parties by December 15, 1967 (J.A. 1). At pre-trial, August 5, 1968, Contractors moved for leave to cross-claim against Singleton for a "Murray credit" (J.A. 38). On November 4, 1968, a pleading entitled "Cross-Claim of Defendant Contractors Transport Corp. against William H. Singleton Co." was filed. In this pleading, Contractors asserted that plaintiff Russell L. Dawson was employed at the time of his accident by Singleton, that the accident was "caused by the negligence of third-party defendant William H. Singleton Company and that except

for the bar of the Workmen's Compensation Act, said third-party defendant would be liable for damages to plaintiffs." A fifty (50) percent credit on any judgment entered in favor of the male plaintiff against Contractors was demanded (J.A. 27).

There was no demand for a jury trial made by Contractors on the issues raised by the so-called "Cross-claim".

At a bench conference prior to the selection of the jury, it was agreed by the Court and the attorneys representing the parties that the issues posed by the cross-claims, and the third-party complaint against Singleton, be ruled upon or determined by the Court after the verdict (J.A. 48, 49, 50, 51). Counsel representing Contractors stated then that he agreed "that the issues of negligence as to the three parties (Contractors, Magazine and Singleton) be submitted to the jury and then the Court rule on the cross-claims based upon the jury's findings." Counsel representing Magazine implicitly agreed that he was "not going to try the third party (complaint) to the jury. . ." and accordingly counsel for the third-party defendant did not participate in the opening statement, voir dire, examination of witnesses, closing argument to the jury, etc. with respect to either the third-party complaint or the cross-claim.

Later in the trial, the Court inquired as to whether the jury could find that the accident was caused by the sole negligence of the remaining defendant Contractors or by the joint negligence of Contractors and Singleton. No disagreement is indicated in the record as concerns this observation (J.A. 212). Subsequently, in deciding upon instructions to the jury, counsel for Contractors advised that it was his contention that the "rigging was done under the control of Singleton. . . .", and that this was not only a defense to plaintiffs' claim but a basis for the cross-claim. (J.A. 212A). The Court permitted argument in line with Contractors' contention that it was Singleton's negligence in putting the choker on, not Contractors' and agreed to a re-draft of Contractors' proposed instructions designed to permit the jury to so find (J.A. 213, 214). Although the instructions were not re-drafted, the Court did instruct the jury on the theory of Contractors' defense (J.A. 216). In other words, Contractors was permitted to argue that "it wasn't our fault, it was Singleton's fault." (J.A. 260).

No special findings were requested to be made by the jury, which returned a general verdict in favor of the male plaintiff in the amount of \$100,000.00 (J.A. 216, 217, 218, 219).

Since the accident had occurred during the course of his employment, plaintiff had received compensation benefits

totalling approximately \$23,000.00 at the time of the trial (J.A. 211).

After the verdict, the Court made findings of fact and conclusions of law dealing with the cross-claim of Contractors against Singleton, finding that Contractors' sole negligence caused plaintiff's injuries, and denying the cross-claim.

It is from the denial of the cross-claim, declining to allow Contractors a fifty (50) percent credit on the plaintiff's verdict of \$100,000.00 that Contractors appeals.

#### SUMMARY OF ARGUMENT

Appellant was neither entitled to a jury trial on its "Cross-claim" nor was it improperly deprived of a jury trial on the issue raised by the cross-claim because:

1. Its counsel had agreed and the Court ruled, at the inception of the trial that the issues involved in the pending cross-claims would be decided by the Court after the jury verdict, and

2. The claim asserted in the cross-claim, for a 50 percent reduction of the male plaintiff's verdict based upon the alleged negligence of the cross-defendant, male plaintiff's employer, or for contribution, however it is phrased, was equitable in nature, for which no right of trial by jury exists.

Accordingly, the Trial Court's findings, arrived at with an opportunity to hear the testimony, see the witnesses and thus evaluate the evidence, to the effect that the sole proximate cause of plaintiff's injuries was appellant's negligence, should be affirmed.

ARGUMENT

APPELLANT WAS NEITHER ENTITLED TO A JURY TRIAL ON ITS "CROSS-CLAIM" NOR WAS IT IMPROPERLY DEPRIVED OF SAME.

The first question raised by appellant has to do with whether it was entitled to a jury trial on its "Cross-claim" against plaintiff's employer Singleton, and, if so, whether it was improperly deprived of same.

With respect to the latter, it is clear from the record that at the outset of the trial it was agreed that the cross-claims would be decided by the Court after the verdict was rendered. This was confirmed during the course of the trial and prior to the settling of the jury instructions. Contractors reserved only the question of Singleton's negligence for the jury and expressly agreed that "the Court rule on the cross-claims based upon the jury's findings". Contractors was permitted to draft instructions permitting the jury to pass upon Singleton's alleged negligence, and was further permitted to and did argue his theory of the case to the jury.

not Contractor's  
theory at  
all!

By its verdict, which was general, the jury found that Contractors was negligent and that Singleton's negligence, if any, was not the sole proximate cause of the accident.

No special interrogatories were submitted for the jury's determination. Following the verdict Contractors submitted the question of Singleton's joint, concurring or contributing negligence to the Court, without any reservations with respect to the propriety of doing so.

Apart from the foregoing, it is also clear that Contractors was not otherwise entitled to a jury trial on the issues raised by the cross-claims. The claim was not for money damages, but rather for a fifty (50) percent credit on the verdict against it, thus reducing the verdict by that amount. The claim as made, therefore did not lend itself to a jury verdict.

While ". . . the constitutional right to trial by jury cannot be made to depend upon the choice of words used in the pleadings", Dairy Queen, Inc. v. Wood, 1962, 82 S.Ct. 894, 900 369 U.S. 469, 477-478, 8 L.Ed. 44, the equitable nature of Contractors' claim is apparent. It has been recognized that if the prayer or the demand is only for equitable relief, the claimant is not entitled to a jury trial. Robinson v. Brown, C.A. 6th, 1963, 320 F.2d 503, certiorari denied, 1964, 84 S.Ct. 662, 376 U.S. 908, 11 L.Ed.2d 607, and Dairy Queen, Inc. v. Wood, supra.

Where there is an uncomplicated single claim purely equitable in nature, and a single purely equitable remedy demanded, there is no right to a trial by jury. Swaffold vs. B. & W., Inc., C.A. 5th, 1964, 336 F.2d 406, 409, certiorari denied, 85 S.Ct. 653, 379 U.S. 962, 13 L.Ed.2d 557.

Both of the cases heavily relied upon by Contractors support the generally accepted proposition that even a claim for contribution is equitable in nature, much less a demand for a 50 percent credit. Murray vs. United States, 1968, 132 U.S. App. D.C. 91, 405 F.2d 1361, and Jones vs. Schramm, 1970, \_\_\_\_\_ U.S. App. D.C. \_\_\_\_\_, \_\_\_\_\_ F.2d \_\_\_\_\_. In Murray, this Court stated in part ". . .but certainly we approve the dismissal of the claim for contribution, since contribution is an equitable doctrine imposing a duty on one tortfeasor to another that is applicable only when the tortfeasors have a concurring liability to the same victim. . . ." (405 F.2d 1365, emphasis added).

More recently, in Jones, this Court re-stated the matter, in part, as follows:

"Contribution is an 'equitable doctrine based on principle of justice', -- which is not dependent on contract, joint action, or original relationship of the parties. It imposes a duty in the case of two (or more) tortfeasors who have a concurrent liability to the same victim, whereby the tortfeasor who for any reason makes payment on his liability to the victim may receive a pro rata contribution from the concurrent



tortfeasor. (citation, Murray)

The doctrine of contribution originated in the courts of equity and it was announced in this jurisdiction in a leading opinion by Judge Groner, to sustain a suit brought in equity by one tortfeasor against the other. We may assume, therefore, as it has apparently been generally assumed, that when contribution is sought against a defendant who was not sued by plaintiff, as is permitted by our decisions, the claim sounds in equity and the court acts as finder of fact to determine whether the second tortfeasor from whom contribution is sought was negligent, and therefore liable to the victim."

The opinion goes on to hold that "Where both alleged tortfeasors are joined as co-defendants in an action brought by the victim, the liability to the victim of the second tortfeasor, from whom contribution is sought is not properly assigned to the non-jury domain of the equity court as finder of fact."

The initial rule therefore prevails since Singleton was not joined, nor could it have been joined, as a co-defendant in an action brought by the plaintiffs in the trial court. It follows that the order of proceeding, permitting the Court to rule on the cross-claim was not only the agreement of the parties, but also was permitted, if not required, by this Court's ruling in Jones, decided within three weeks after the rendition of the verdict.



As stated in Barron & Holtzoff, Vol. 2B, Section 873, p. 32,

"The usual practice is to try the legal issues to the jury and to try the equitable issues to the court. Where there are some issues common to both the legal and equitable claims, the order of trial must be such that the jury first determines the common issues. The court may, if it chooses, submit all the issues to the jury. . . ."

Collins vs. Government of Virgin Islands (3rd Cir.), 1966, 366 F.2d 279, after reviewing the right to, and waiver of, jury trials holds "These principles lead us to conclude that the better rule is that a defendant can rely on the jury demand of a co-defendant to the extent of the issues embraced by that demand."

If, as Barron & Holtzoff, Sec. 877 goes on to indicate, that a third-party plaintiff or third-party defendant must file an additional demand for jury trial on the issues posed by the third-party pleadings, can it be said that a defendant is entitled to rely upon a jury demand by a co-defendant in a third-party proceeding? It is submitted that it does not seem appropriate, especially where, as here, the co-defendants occupy substantially different positions, one being a contractor above, and the other a contractor below, on the construction scale. Implicit in the different status of the parties are the differing legal concepts upon which their respective claims are based.

PLAINTIFFS' INJURIES WERE CAUSED BY THE SOLE NEGLIGENCE OF APPELLANT CONTRACTORS AND THE TRIAL COURT'S FINDINGS WERE BASED UPON SUBSTANTIAL EVIDENCE.

The final question raised by this appeal of Contractors Transport Company against the Singleton Company is whether the Singleton Company (male plaintiff's employer) was a joint tortfeasor so as to bring the rule of *Murray vs. United States*, 132 U.S. App. D.C. 91, 405 F.2d 1361, into effect, thus reducing the male plaintiff's verdict against Contractors by fifty (50) percent, to \$50,000.00, and at the same time, presumably, eliminating the workmen's compensation lien existing in favor of the employer's workmen's compensation insurance carrier.<sup>1</sup>

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<sup>1</sup>Under the Longshoremen's Act, as made applicable to the District of Columbia, workmen's compensation is an employee's exclusive remedy against his employer, *Shreve v. Hot Shoppes, Inc.*, 110 U.S. App. D.C. 268, 292 F.2d 761. Unlike a settlement with a joint tortfeasor, acceptance of compensation operates as an assignment to the employer of all rights of the employee, to the extent of such payments, Title 33, Sec. 933(b). Where the employer is insured, the carrier "shall be subrogated to all of the rights of the employer" to obtain reimbursement. While the assignment does not preclude an employee from bringing action in his own name, *Leonard vs. Liberty Mutual*, 267 F.2d 421, the carrier is entitled to full reimbursement of all compensation and medical expenses paid by it, *Seaboard Marine v. Quigley*, 266 F.2d 882, *Ashcraft & Gerel v. Liberty Mutual Insurance Company*, 120 U.S. App. D.C. 51, 343 F.2d 333. It is apparent that the analogy drawn to the *Murray* case is misplaced.

It was not reached in Murray, nor was it in this case, because the "credit" presumably destroying the subrogated claim, was not applied, but eventually this Court will be called upon to decide if the doctrine, as applied to a workmen's compensation case does not unconstitutionally or otherwise deprive the employer, or carrier, of a property right without due process.

The evidence and testimony established that the accident involved was caused either by the negligence of Contractors, or the negligence of Singleton. That was the basis upon which the case was argued and submitted to the jury. At one stage of the trial, the Court, in fact, stated to the jury that after several days of testimony, it was now clear that the question was whether Contractors was negligent, or whether the employer Singleton was negligent in causing the accident. All counsel concurred. For obvious reasons, primarily because it was no defense to plaintiff's claims Contractors did not contend to the jury that Singleton's negligence, if any, was concurrent or joint.

The evidence as accepted by the jury was to the effect that modern construction work is an example of specialization, each trade having its own function. Contractors agreed to deliver the chillers to the job site and "to rig

them into place when directed'. All of the equipment being used was Contractors, the truck was Contractors and the very work being performed was the "rigging into place when directed" called for by the purchase order with Contractors.

More particularly, the sling or "choker" cable that broke causing the accident was owned by Contractors, brought to the job site by its employees, and physically attached to the truck by Contractors' employees. There was no evidence or testimony that tended to establish credibly that:

1. The attachment of the choker cable was done by Singleton employees alone, or
2. The attachment was jointly done by employees of both contractors.

It is difficult to conceive of the attachment of this choker cable to Contractors' truck being done by persons other than the owner of the equipment, or, in fact, by more than one person. It was a simple operation, looping the cable through the truck body. Unfortunately, it was not done properly, according to accepted standards, or in accordance with the Safety Code, and it severed, directly causing the accident.

It is true, of course, that Singleton employees had a part in the moving of the chillers, but this had to do entirely with jacking the chillers, placing rollers under them, and attaching the cable to the load line. They had nothing to do with the attachment or ownership of the particular and specific aspect of the work that caused the injury, and the jury so found.

Contractors was a presumably competent organization engaged to perform a specific function that fell within the realm of its expertise.<sup>2</sup> The accident occurred while Contractors was carrying out the terms of its contract, with its employees, and with its equipment.

It is in no position to rely upon reserved supervisory authority of Singleton in its contract with the Gas Company because the work being performed was its work, that it, Contractors, contracted to do because it was an expert in this particular field.<sup>3</sup> Similarly it cannot shift the

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<sup>2</sup> Standardized Jury Instruction Number 84, on page 67, of the revised edition, 1968, defines an "Independent Contractor" as "one who, engaging in an independent employment, contracts to do a piece of work according to his own methods and without being subject to the control of the person who hires him except as to the result of the work."

<sup>3</sup> Peter vs. Public Contractors vs. Cunningham Construction Co., 368 F.2d 111 (1966) ". . . analysis begins with the general common law rule that an employer is not liable for torts of an independent contractor in the course of work for the performance of which he has engaged the contractor. . . . liability created by right of control is something more than the general right of inspection and supervision. . . ." See also Lipka vs. United States, 369 F.2d 288.

failure to provide barricades from itself to the employer especially in the face of plaintiff's testimony that he was directed by the Contractors' foreman to go to the truck to get a hammer, which he was doing at the time of the accident. This allegation, incidentally, was not denied by Mr. Ward, the foreman, in his own testimony.

Contractors contends that the work was hazardous and of the type for which authority cannot be delegated. The testimony of Mr. Coakley, fairly construed, established that all work is dangerous to some degree, and that this work was no more or no less so than the usual. It certainly was not conceded that the work was ultra-hazardous of the nature contemplated by the rule cited.

More importantly, however, Contractors cannot rely upon the rule because it does not fall within the class of persons, innocent third parties normally, that the rule is designed to protect. It was its negligence as an independent contractor that caused the accident and it ill behooves it, at this stage, to say that it should not have been engaged to do the work, or that the authority could not be, and should not have been delegated to it.

With respect to the alleged duty created by the statute, to provide a safe place to work, it is obvious that the accident involved in this case occurred because a cable was cut, not because there was an unsafe place to work insofar as the conditions created by the employer were concerned. In other words, the accident was not caused by an unsafe place to work but rather by the negligence of Contractors in performing the details of its work. If it was an unsafe place to work, it was unsafe because of Contractors' negligence.

If the plaintiff had been injured as a result of a condition on the premises, created in part by Singleton, as was apparently the case in Murray, perhaps the rule should be applied. However as the Court stated in Bailey v. Zlotnick, 77 U.S. App. D.C. 84, 149 F.2d 507, "... a distinction is made between the negligent manner of the work and the condition of the premises which results from the negligence." The illustration from the Restatement, Torts, Sec. 426, holds that an employer of a contractor is liable for the negligence of the sub-contractor if such negligence creates a dangerous condition, but the employer is not liable for acts performed in the work, such as dropping a pipe.




Applying the foregoing to the facts of this case, it seems clear that contribution, in the form of a fifty (50) percent credit is not applicable. Each of the alleged tortfeasors, Contractors and Singleton, performed separate and distinct functions with respect to the specific operation being performed, and only Contractors, by the evidence of all of the witnesses, owned, attached and had responsibilities relating to the cable that severed. On the facts and the law, rather than Contractors being entitled to contribution, it should be held liable to indemnify and hold Singleton harmless.

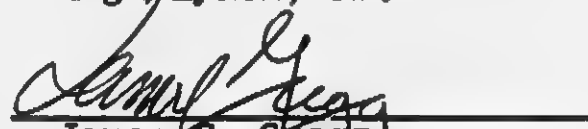
CONCLUSION

The cross-claim for a fifty (50) percent reduction of plaintiff's verdict was properly denied and the denial thereof was based upon substantial evidence and the findings made by the Trial Court acting in its capacity of finder of fact, together with the conclusions of law, holding appellant liable for the damages caused by its negligence, should be affirmed.

Of Counsel:

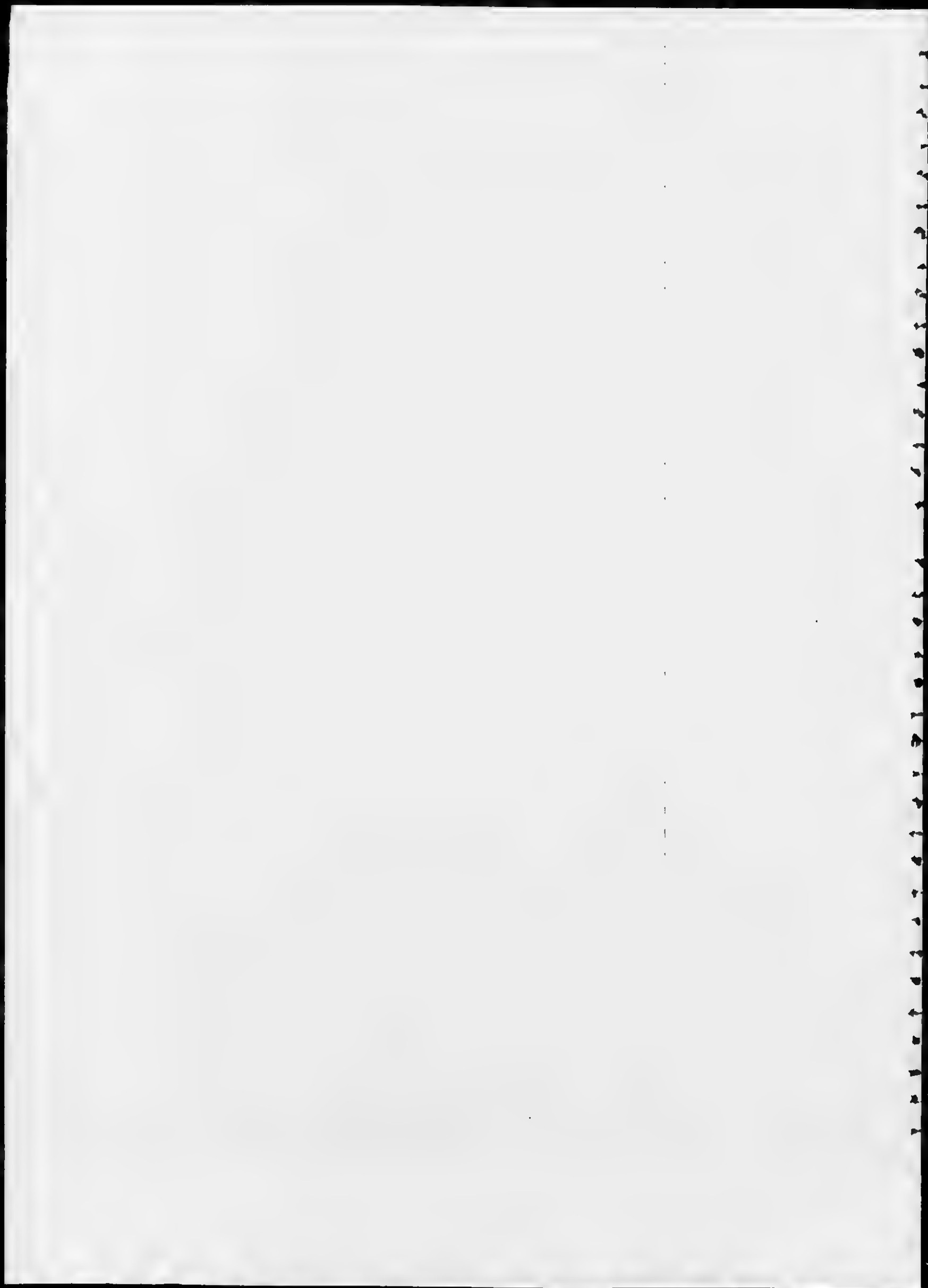
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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24,533

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RUSSELL L. DAWSON,

*Appellee,*

v.

CONTRACTORS TRANSPORT CORPORATION,

*Appellant,*

v.

WILLIAM H. SINGLETON COMPANY,

*Appellee.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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REPLY BRIEF OF APPELLANT

United States Court of Appeals  
for the District of Columbia Circuit

Charles E. Pledger, Jr.  
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FILED JAN 9 1971

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REPLY BRIEF OF APPELLANT

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1. With Respect To The Brief Of Appellee Dawson

Counsel for Dawson with tedious repetition in his brief states that there was an agreement among all counsel below that the Court would try all issues of Contractor's cross-claim against Singleton. This is simply not the case as the transcript clearly denotes this counsel's position at the beginning of the trial (J.A. 48):

"Mr. Mahoney - \* \* \* I agree with Mr. Magee that the issues of negligence as to the three parties be submitted to the jury and then the Court rule on the cross-claim based upon the jury's findings."

It seemed apparent that the Court understood this position (J.A. 49):

"The Court: As I see it, the only thing to be submitted to the jury, if the case gets to the jury, is a case against Contractors Transport Corporation, Magazine Brothers Construction Corporation, and third-party defendant Singleton Company, now known as Limbach Company.

Those are the only three cases submitted to the jury."

This position was reiterated by the Court (J.A. 51) and later in the trial (J.A. 212). It was not until all the evidence concluded and counsel for Singleton made its statement (J.A. 258) that the Court reversed its position and withdrew the issue of negligence on the part of Singleton from the jury (J.A. 258-261).

All parties agree that the law as applied to the cross-claim, that is whether or not the 50% credit would be applied, would be a matter for the Court to determine. The confusion, if any exists, concerns whether the Court or the jury was to try the issue of negligence in the cross-claim.

Counsel for Dawson on page 5 of his brief states that this counsel made no further contention that the agreement was not as stated lastly by the Court (J.A. 258-261) which is again incorrect. The day following the Court's ruling that it would determine the issue of Singleton's negligence, the Court stated in (J.A. 212, 212A)

"The Court: I thought we had agreed, that is, you two had agreed, that the only issue is whether or not the remaining defendant, that is, Transport-Contractors Transport, was guilty of negligence, if so, that negligence was the proximate cause of the accident and injuries allegedly sustained.

Mr. Magee: Yes, sir; this is the way I understand the posture of the case.

Mr. Mahoney: It was resolved, but that is *not* my understanding the way it started out." (Emphasis supplied)

And then again before the jury retired (page 218):

"Mr. Mahoney: If Your Honor please, I would like to renew my objection \* \* \* and object to the Court's withdrawal of Singleton's case, the negligence aspect of Singleton [from the jury] \* \* \*."

Although counsel for Dawson insists that there was an agreement that the Court would decide all issues of the cross-claim and that it did decide the issue of Singleton's negligence although adversely to Contractors, he states on page 15 of his brief:

"The jury's verdict found against appellant on the issues of Dawson's and/or Singleton's negligence \* \* \*."

And went on to say that the jury found that the sole negligence of appellant caused the injury. And again, counsel for Dawson in his brief on page 27:

"Singleton's negligence was submitted to the jury."

And in its "Conclusion"—"the jury in effect, found Dawson and Singleton not negligent. \* \* \*"

Despite this apparent contradiction, the only issue of liability submitted to the jury was whether or not there was negligence—not sole but any—on the part of Contractors which proximately caused the injuries complained of. As a matter of fact, the jury's verdict was returned in written form as the record reflects. There was nothing in the written jury verdict which would in any way pertained to Singleton's negligence.

As pointed out by counsel for Singleton, it would be no defense to plaintiff's case for counsel for Contractors to argue to the jury that Singleton was a co-tortfeasor. Coun-

sel for Contractors' argument was that Singleton's negligence was the sole cause of plaintiff's accident which is to say Contractors was not negligent. The jury rejected this contention by its verdict but it did not, nor could it, consider whether Contractors and Singleton were *both* negligent.

## 2. With Respect To The Brief Of Appellee Singleton

Counsel for Singleton states on page 4 of his brief that inasmuch as it was his understanding that the Court would try the issues of the cross-claim that he did not participate in the opening statement, voir dire examination of witnesses, closing argument to the jury, etc. with the implication, of course, that had the agreement been otherwise then he would have participated. However, there was no separate proceeding on the cross-claim as such following the jury trial. The Court merely took the matter under advisement requesting written memoranda from counsel on their respective positions. Hence, all the evidence on the cross-claim went in during the trial of the main action. The silence or non-participation of counsel for Singleton during the trial was but a defensive tactic on his part.

Counsel for Singleton misconstrues the holding in *Jones v. Schramm*, \_\_\_\_\_ U.S. App. D.C. \_\_\_\_\_, \_\_\_\_\_ F.2d \_\_\_\_\_, decided by this Court March 5, 1970. He states that the cross-claim being essentially equitable in nature must be tried by the Court, and there is no right to a jury trial.

In *Jones* the issue of both defendants' negligence was submitted to the jury which found for the plaintiffs against Schramm and for the defendant Jones against the plaintiffs. It was after the jury's verdict that the Court proceeded to rule on the cross-claims and the Court, in effect, overturned the jury's verdict with respect to Jones by granting contribution. This aspect of the case was reversed by this Court. The finding by the jury that Jones was not negligent determined the legal effect of the cross-claim for contribution.

The method of proceeding in *Jones* was the same which counsel for Contractors understood was to take place in the trial below up until all the evidence had concluded.

The case of *Knell v. Feltman*, 85 U.S. App. D.C. 22, 174 F.2d 662 (1949) cited by this Court in *Jones* is again very similar procedurally to what was attempted by counsel for appellant. There, only one defendant was sued by plaintiffs, namely Feltman, but he in turn impleaded Knell, the operator of the vehicle in which the injured passenger rode. The plaintiffs did not amend their complaint to include Knell as an additional defendant. Nevertheless, the question of Knell's negligence was submitted to the jury and based upon the jury's finding the Court concluded that contribution should obtain (page 665, 174 F.2d):

"The jury's finding, which was in effect that the concurrent negligence of Feltman and Knell caused the injuries, made them, as between themselves, jointly responsible for the damages awarded against Feltman."

\* \* \* \* \*

(page 667, 174 F.2d):

" \* \* \* The question of negligence vel non on the part of Knell toward them was submitted to the jury when the Court asked, 'Was \* \* \* Knell, negligent, and if so, was his negligence the sole or contributing cause of the collision \* \* \*?' The jury's answer was 'Contributing.' "

Later in *Martello v. Hawley*, 112 U.S. App. D.C. 129, 300 F.2d 721 (1962):

"Accordingly, we now hold in the factual circumstances of this case that when settlement is made with one joint tort-feasor and later a verdict is obtained against the other, *and the jury finds that the settling tort-feasor should contribute*, then the verdict should be credited with one-half its total amount and the defendant tort-feasor should be required to pay only the remaining balance, namely



one-half the total original verdict." (Emphasis supplied)

### CONCLUSION

For the reasons set forth herein and also in appellant's brief and the relief set forth herein in its CONCLUSION, appellant Contractors respectfully submits that judgment below on the cross-claim should be reversed and that the case remanded to the lower court for a jury trial on the cross-claim.

Respectfully submitted,

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